



**Stratham Zoning Board of Adjustment
Meeting Minutes
May 24, 2016
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Bruno Federico, Board of Selectman Representative
Garrett Dolan, Full Time Member
Chris Brett, Full Time Member
Phil Caparso, Full Time Member
Deidre Lawrence, Full Time Member

Members Absent: Chris Cavarretta, Full Time Member

Staff Present: Mark Morong, Code Enforcement Officer

1) Call to Order/Roll Call

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

2) Approval of Minutes

a. April 12, 2016

Mr. Brett made a motion to accept the minutes of April 12, 2016 as presented. Ms. Lawrence seconded the motion. Motion carried unanimously.

3) Public Hearing(s)

- a. Case #629: Michelle Dunklee, 9 Linwood Lane, Stratham, NH 03885, for property located at 9 Linwood Lane, Stratham, NH, Tax Map 22 Lot 41.** A Variance application request from Stratham's Zoning Ordinance, 11.5.3(b) has been filed requesting relief to construct a deck within a wetland buffer zone in which all construction activities are prohibited, continued from March 22, 2016.

Mr. Dolan motioned to accept the application. Mr. Brett seconded the motion. Motion carried unanimously.

1 Ms. Dunklee-Stickney explained that due diligence has been done since the April 12, 2016
2 meeting. Luke Curley, NH certified environmental scientist with Gove Environmental
3 Services, has provided a packet to the board. Mr. Curley explained he has been to the site to
4 assess the situation and view the existing conditions on the property. Mr. Curley verified the
5 delineation of the wetlands and soils; the wetland line and existing conditions show no
6 change from previous delineation. Mr. Curley provided two aerial photos showing different
7 perspectives which shows a different aspect of the plane when it flew over. The existing
8 gravel pad is visible on the aerial photo. Mr. Curley walked the board through the packet to
9 explain his findings. Mr. Curley spoke with Exeter Lumber regarding the deck material. The
10 deck will be built with composite decking, the beams and supports will be pressure treated,
11 and the railings will be vinyl sleeved with caps so the pressure treated wood will not be
12 directly exposed to the elements, standard galvanized nails and stainless steel cables. There
13 will be no run off of material into the wetlands or buffer due to the elements. Mr. Caparso
14 questioned how deep the existing gravel is. Mr. Curley stated the gravel is just a thin layer.
15 Mr. Brett asked the width and depth of the pad. Mr. Curley stated 36' wide by 24' deep. Mr.
16 Brett stated the pad is encroaching on the buffer. Ms. Lawrence questioned if there would be
17 any cutting on site. Mr. Hurley stated there will not be any cutting on site, the material is
18 pre-cut and delivered. Mr. Caparso questioned where the 32' pad would be to the riff-raff
19 swale. Mr. Hurley stated you cannot see it. Mr. Caparso asked for clarification that the 32'
20 encroachment is existing on a wetlands setback; Mr. Hurley stated it was built with the
21 original house. Mr. Dolan stated this is made-land to which Mr. Curley confirmed was done
22 with the original house build. Mr. Dolan asked for clarification of the elevation of the poorly
23 drained soil. Mr. Curley gave a rough estimate of at least 10'. Mr. Morong stated it appears
24 the buffer was encroached on when the house was constructed. Mr. Caparso asked Mr.
25 Morong for clarification that when the house was built they filled in a 36' buffer without
26 proper paperwork. Mr. Morong stated he has not seen any permits or variances in the
27 original building file that states there was approval.

28 Mr. Federico stated he was on the planning board when this development was built and his
29 recollection is the developer was told the existing house should be turned 45 degrees; toward
30 the road. Donna Jensen, member of the Conservation Commission, stated the encroachment
31 has already happened, but the Conservation Committee feels a situation is being created
32 where storm water coming off the deck and additional water will impact the wetland that
33 exists. Ms. Lawrence explained the ZBA asked the applicant to provide an environmental
34 scientist, Mr. Curley, to demonstrate no negative impacts to the wetlands and buffer zone
35 from the materials submitted. Mr. Curley explained there will be gaps in the deck boards for
36 water to run through, as well as gutters and downspouts on the house. Mr. Brett asked for
37 clarification of the number of sonotubes used to build the deck. Mr. Morong stated the
38 building permit states 3, but Mr. Morong would like to see 8' span. Mr. Brett stated it
39 appears to be 5 SF of disturbed area, which Mr. Morong stated will be put back once the
40 tubes are installed. Mr. Curley stated when he was at the site end of March/beginning of
41 April, during the wet season, he did not encounter any standing water.

1 Mr. Dolan moved to close the public session. Mr. Caparso seconded the motion. Motion carried unanimously.
2

3 Mr. Caparso stated this deck, due to the information received tonight, does not impose the
4 impact that was originally stated. Mr. Dolan stated the impact made on the wetlands was
5 made when the project was initially approved and built, which makes it difficult to go back
6 and recreate those conditions and make the current owner responsible when the developer,
7 builder, and code enforcement officer at the time should have been overseeing the work. Mr.
8 Brett and Mr. Caparso agreed with Mr. Dolan. Ms. Lawrence stated she is satisfied with the
9 applicant's due-diligence and more and demonstrated a lack of negative impact combined
10 with the fact that more significant alteration were already existing on the site. Mr.
11 Charbonneau stated the board will go through the variance criteria.

12 No variance shall be granted unless all of the following conditions are met:

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

14 Mr. Dolan stated the major impact on the wetland area took place with the original
15 building and the applicant met her burden by bringing in an environmental scientist and
16 there is no negative impact. Mr. Charbonneau and Mr. Caparso agreed. The board
17 agreed unanimously that the variance will not be contrary to the public interest.

- 18 ii. The spirit of the ordinance is observed.

19 Mr. Dolan agreed the spirit of the ordinance is observed, the applicant has done
20 everything she can to mitigate the impact on the wetlands area and the impact took
21 place in 2008. The board agreed unanimously that the spirit of the ordinance is
22 observed.

- 23 iii. Substantial justice is done.

24 Mr. Dolan stated it is hard to make the applicant, who bought a parcel in good faith, fix
25 something that was done through an error made by the developer 15 years ago. Mr.
26 Charbonneau agreed that this situation should have been caught when first developed.
27 The board agreed unanimously that substantial justice is done.

- 28 iv. The values of surrounding properties are not diminished.

29 Mr. Dolan stated the project will not diminish the value of the surrounding neighboring
30 properties. The board agreed unanimously that the values of surrounding properties
31 will not be diminished.

- 32 v. Literal enforcement of the provisions of the ordinance would result in an unnecessary
33 hardship.

- 1 1. For purposes of this subparagraph, “unnecessary hardship: means that, owing to
2 special conditions of the property that distinguish it from other properties in the
3 area.
- 4 a. No fair and substantial relationship exists between the general public
5 purposes of the ordinance provision and the specific application of that
6 provision to the property, and
- 7 b. The proposed use is a reasonable one.

8 Mr. Brett stated the encroachment to the berm has the bearing and the impact is on the
9 sub-section, and literal enforcement would cause unnecessary hardship on the owner.
10 Mr. Caparso stated literal enforcement would cause unnecessary hardship on the
11 owner with no benefit to the town and the proposed use is a reasonable one. The
12 board agreed unanimously that the no fair and substantial criteria is met due to the
13 condition of the property as they purchased it with the alteration already having
14 occurred.

15 2. Not applicable

16 3. Not applicable

17 Mr. Dolan made a motion to GRANT the variance to Article 11.5.3(b) regarding Case #629,
18 Michelle Dunklee, 9 Linwood Lane, Stratham, NH 03885, for property located at 9 Linwood
19 Lane, Stratham, NH, Tax Map 22 Lot 41 to allow the construction of a deck as proposed with
20 minimal impact. Mr. Caparso seconded the motion. Motion carried unanimously. Mr.
21 Charbonneau explained to the applicant that there is a 30-day period in which anyone has a
22 right to appeal the ZBA decision so any work that is done in that period is at the applicant’s
23 own risk.

- 24 b. **Case #632: Bradlee Mezquita, Tighe & Bond Inc., 177 Corporate Drive,**
25 **Portsmouth, NH 03801, for property located at One Fine Chocolate Place,**
26 **Stratham, NH, Tax Map 3 Lot 1.** A Variance application request from Stratham’s
27 Zoning Ordinance, Article 11.5.3(b) (d) has been filed requesting relief to permit the
28 construction of a parking area, new site entrance, and guard house in areas designated as
29 wetland and very poorly drained soil buffer zones.

30 Mr. Charbonneau explained to the board that the Conservation Commission had a site
31 inspection 10 days ago and a meeting is scheduled for Wednesday, 5/25/2016, night to
32 discuss their findings and/or conclusions. Donna Jensen, member of the Conservation
33 Commission, requested a continuation of this case until the Conservation Commission has an
34 opportunity to meet and gather questions. Mr. Charbonneau stated the board has that option
35 since it is a case that has existing information due to a prior approval of buffer issues. Ms.
36 Lawrence asked Ms. Jensen if there is an application before the Conservation Commission

1 for permission for the alteration. Ms. Jensen directed the question to the applicant. Bradlee
2 Mezquita stated there will be an application and it has not yet been filed with the state
3 pending the Conservation Commissions meeting, which will be a Wetlands Dredge and Fill
4 application. Ms. Lawrence stated there is not enough information submitted to make a
5 determination; and there is little to no information about the guard shack construction, there
6 is no background for the board to understand the scope. Mr. Caparso questioned whether a
7 site walk would appropriate given the scope of this project. Mr. Charbonneau explained that
8 part of this application is pre-approved in 2006 and part of the original project within the
9 industrial park. Ms. Lawrence questioned if the parking lot was approved, which was part of
10 a drive and impact on wetlands which demonstrated some of changes. Mr. Mezquita stated
11 that when the application was submitted, Tavis Austin, the town planner researched old town
12 records from 2006 when the original parking lot was constructed and information relative to
13 that was found when the Warehouse was built. Ms. Lawrence would like more detail,
14 including who pre-approved it, the date, and the information regarding previous records.
15 Mr. Brett would like to have the previous records of variances to see the whole picture
16 instead of granting variances piece-meal. Mr. Federico stated that in previous proposals,
17 which included an impact to a wetland, there was mitigation and questioned Mr. Mezquita if
18 there is mitigation in place to which Mr. Mezquita stated yes. Mr. Federico was on the
19 original planning board when the original concept for the entire site was approved, and it was
20 understood that every time there was an impact that there would be mitigation and as long as
21 there is mitigation for this project, it will be taken under consideration. Mr. Mezquita agreed
22 and stated it is required by the State of NH. Mr. Caparso would like to walk the property and
23 receive the history of this property. Mr. Charbonneau questioned if there is state approval for
24 the wetlands in the center of the parking lot. Mr. Mezquita stated that it has been partially
25 approved. Mr. Morong stated he understands that once the pre-approval is granted at the end
26 of the parking lot, it essentially is no longer considered a wetland and whether it is even
27 considered a buffer zone is questionable. Mr. Morong stated Mr. Austin plans to attend
28 future meetings regarding this case to explain in detail. Mr. Dolan would like the
29 documentation and history in hand to see what has transpired over the history of this
30 particular parking lot.

31 The board requested the applicant provide the following information:

- 32 1. The original variance application from 2006 regarding the expansion of the parking lot.
- 33 2. The report from the Conservation Commission.
- 34 3. A narrative explaining the changes to the property in regards to this variance.

35 Mr. Charbonneau questioned why the expansion to the site entrance is required now and was
36 not required prior. Mr. Mezquita responded that the FDA is asking that the entire facility be
37 enclosed or fenced in. The guard shack, as is, does not meet FDA requirements and they are
38 asking to widen the 2-lane road to locate the guard shack in the middle so when trucks come

1 in they can be stopped and checked at a gated entrance, which will include a by-pass lane for
2 employees so there is no back up onto the road; and will mirror the opposite site as you exit.
3 Mr. Federico clarified that Homeland Security requires all Food Production plants to be
4 secure, which to date has been limited security, and with the guard shack in place you will
5 not be able to enter or exit without being checked. Mr. Dolan would like the applicant to
6 develop a legend for the symbology that is on the plan. The applicant stated he could provide
7 the ZBA with a full set of site plans that have been provided to the planning board. Mr.
8 Federico encouraged the board to plan a site walk for the property.

9 Mr. Charbonneau motioned to open Case #632.

10 Mr. Caparso made a motion to continue ZBA Case #632 to June 14, 2016. Mr. Dolan
11 seconded the motion. Motion carried unanimously.

12 The board recommended the following information for the continuation of Case #632 to be
13 available on June 14, 2016.

- 14 • Any background information regarding the parking lot to be provided by Tavis Austin
15 that the ZBA may need to hear the case.
- 16 • The report from the Conservation Commission.
- 17 • The ZBA will conduct a site walk to understand the scope of the project scheduled for
18 Wednesday, June 1, 2016 at 5:30 pm to meet at the entrance at the cul-de-sac at Marin
19 Way to get through security.

20 Mr. Charbonneau made a motion to close Case #632. Mr. Dolan seconded the motion.
21 Motion carried unanimously.

22 Mr. Dolan made a motion to adjourn at 8:14 pm. Ms. Lawrence seconded the motion.
23 Motion carried unanimously.