



Stratham Zoning Board of Adjustment
Meeting Minutes
January 24, 2023
Municipal Center
Time: 7:02 PM

Members Present: Drew Pierce, Chair
Bruno Federico, Member
Phil Caparso, Alternate
Brent Eastwood, Member

Members Absent: Richard Goulet, Vice Chair

Staff Present: Jim Marchese, Code Enforcement Officer/Building Inspector

1. Call to Order/Roll Call/Seating of Alternates:

Mr. Pierce called the meeting to order and took roll call. Mr. Pierce appointed Mr. Caparso as a full voting member.

2. Approval of Minutes:

January 10, 2023

Mr. Pierce asked if there was a motion to accept the meeting minutes from January 10, 2023 as submitted. Mr. Caparaso made a motion to accept the meeting minutes and Mr. Federico seconded the motion. All were in favor and the motion carried unanimously.

3. Public Hearing:

Mr. Pierce moved to the public portion of the meeting where the Zoning Board of Adjustment (ZBA) shall decide whether to grant or deny the following request: Case# 667 Stratham retail Management, LLC 30200 Telegraph Road Suite 205 Bingham Farms, MI regarding 23 Portsmouth Avenue, Map 4 Lot 13, Gateway Commercial Business District.

Equitable Waiver of Dimensional requirements request from Article 3, Section 3.8.8 Table 2 of the Stratham Zoning Ordinance to obtain 2.3 feet of relief from the required sideline setback of 10 feet.

Mr. Marchese stated that the applicant's representative sent the Town a letter today (January 24, 2023) stating that since only 4 members were available for tonight's meeting they respectfully request for a continuance and they are looking forward to the February 21, 2023 meeting.

Mr. Pierce stated that a fifth member may be joining the Board (Francis Macmillan).

Mr. Caparso made a motion to grant a continuance to move the hearing of Case# 667, Stratham Retail Management, LLC 30200 Telegraph Road Suite 205 Bingham Farms, MI regarding 23 Portsmouth Avenue, Map 4 Lot 13, Gateway Commercial Business District, until the next meeting on Tuesday, February 21, 2023. Mr. Federico seconded the motion. All were in favor and the motion carried unanimously.

Mr. Pierce stated that this concludes the public portion of the meeting.

4. New Business:

Mr. Pierce stated there will be no public input on this portion of the meeting, which will be a motion for the rehearing of 23 Portsmouth Avenue case #666. Mr. Pierce also stated that the ZBA received a letter from Thomas House, Chair of the Planning Board, and Mr. Pierce asked the ZBA's opinion on whether or not to grant a rehearing. Mr. Pierce asked if the information received from Mr. Phoenix had been reviewed by everyone?

Mr. Caparso asked if the ZBA had the option for the Town's counsel to review for input.

Mr. Marchese said he believes they always have that availability. He summarized for the ZBA how the situation occurred, stating that on January 9, 2023, the Select Board submitted their motion for a rehearing, and as a courtesy the applicant's representative was notified of the request and responded on January 20, 2023. Mr. Marchese said that he also sent a staff review letter dated January 20, 2023. Mr. Marchese stated that the Town's attorney indicated that the ZBA can review the letter from the applicant's representative, but the ZBA doesn't need to ask questions about it unless the ZBA is seeking legal input. He went on to say that if the ZBA is seeking legal input, then the ZBA's decision should be delayed until that input is found.

Mr. Pierce stated that he reviewed all the information from the Town, Mr. Phoenix, the Planning Board and the staff review, and he did not find anything moving to rehear the application.

Mr. Marchese stated that both he and the applicant's representative highlighted the RSA which states: As long as the ZBA has good reason to rehear the case, then they should move forward in that direction. He stated that both documents state the same thing. Mr. Marchese said that if the information presented in the January 9, 2023 letter contains information that may sway the ZBA's opinion, then the ZBA should continue in that direction.

Mr. Caparso referred back to point #1 from the Select Board's letter dated January 9, 2023 (The applicant's counsel misstated and mischaracterized the Planning Board's deliberations related to the placement of the building) stating that he believes this is an opinion and should be discounted. Mr. Caparso referred back to point #2 from the same letter (It is clear from the ZBA deliberations that members relied specifically on Mr. Phoenix's statements related to the Planning Board) stating that he did not believe this was the case. Mr. Caparso stated that he listened to Mr. Phoenix, but his opinion was mostly swayed by the deliberation of the ZBA and how the ZBA came to their conclusion. Mr. Caparso said it is opinion based, so he would discount point #2. Mr. Caparso then referred back to point #3 of the same letter (The amount of building signage proposed for the site is unprecedented in that it far exceeds any recent building signage approved by the Town) stating that he believes this is an opinion statement. Mr. Caparso stated that point #1 and #2 are opinion statements without anything to back them up, and point #3 has some merit to it, but not enough to change an opinion.

Mr. Pierce agreed, adding that point #3 of the Select Board letter mentions surrounding town (zoning) and he does not believe this has any bearing on this case since the surrounding town zoning is their

zoning, not Stratham's, and therefore not relevant. Mr. Pierce referred back to the letter from the Select Board, stating that he doesn't see anything that warrants a rehearing of the case.

Mr. Caparso stated that the ZBA hearings are not precedent setting, but are to stand on their own, and he stated that point #3 violates that, saying that in other places this is different. Mr. Caparso believes that violates what they are trying to do with the ZBA. Mr. Caparso went on to say that he is against reopening the hearing.

Mr. Pierce added that the Planning Board, who is opposed to this (the granting of the variance), is the one who originally approved the site plan with the architectural plans showing signage on it. Mr. Pierce stated that he knows it is not the Planning Board's role to officially assign signage, but if they relied on the plans and made a financial investment into that property with that assumption, then he does not feel the ZBA should change its decision. The Planning Board should do their work and the ZBA should do theirs.

Mr. Marchese said that it is clearly stated in the ordinance under the signage section that he, as the Building Inspector, is responsible for size of signage and the Planning Board does not even review that.

Mr. Pierce said that (in light of Mr. Marchese's statement) he takes back his previous statement, but he stands by what he said previous to that- that this does not merit a rehearing.

Mr. Federico stated that he had been willing to present a condition during the previous discussion of signage to reduce the amount of signage since there were issues by both parties with differing opinions. He stated his condition proposal stated that if you take away the signage on front you would get what you wanted on the north and south approach because that is where people would be looking. He said that people aren't looking at the front of the building, but driving past it each way. So if people don't see it on the south or on the north, they are not going to see it on the front of the building. Mr. Federico stated that his condition was shot down at that time and he changed his mind because it was a 4:1 decision against the condition and they then voted 5-0 to grant the relief. Mr. Federico said he is not in favor of a rehearing since he doesn't see anything new that will change their minds now.

Mr. Eastwood stated that the signage is attractive, is not a billboard style, and is on three faces, not one. Mr. Eastwood referred to the last page of the letter from Mr. House, stating that although Stratham is not Exeter, Newfields, or North Hampton, he is concerned because the maximum signage permitted by Stratham is more than two times the maximum of the next highest town, and the ZBA approved two times that maximum. He is concerned this is something the ZBA would open itself up to in the future.

Mr. Pierce asked if Mr. Eastwood was for or against the rehearing. Mr. Eastwood said that he was open to a rehearing.

Mr. Pierce stated that the issue he has with a rehearing is that the ZBA would be going back to argue the same point since there is no new piece of information. He also stated that the ZBA had the information in front of them when they approved it (the variance) and he believes ZBA decisions are final, unless appealed. Mr. Pierce said he does not personally feel that a case can be opened back up to things previously discussed. Mr. Pierce asked if this is accurate? He asked that if the ZBA is discussing the same thing- the ordinance verses the size of the sign- if they can go back and reopen it?

Mr. Marchese said that point #1 of the January 9, 2023 letter from the Select Board may be a good point that the ZBA should read again, specifically that, "Mr. Phoenix stated that the Planning Board wanted the building "pushed forward" closer to Portsmouth Avenue." Mr. Marchese stated that it says further on, "the Planning Board never requested the building be pushed closer toward Portsmouth Avenue" and "the Planning Board voiced concern with the location of the building so close to Portsmouth Avenue." Mr.

Marchese asked if a hardship was presented by the applicant's representative and did the applicant have a hardship since they were forced to put the building so close to the road? Mr. Marchese stated the ZBA should explore these questions.

Mr. Pierce stated that Mr. Phoenix had responded to this issue in his letter.

Mr. Federico said that the issue is that this is the first construction in the Gateway District using the new Gateway Zoning Standards. All the other (buildings) were preapproved prior to the Gateway. The Gateway Zoning says they want buildings as close to the street as possible, within the square footage. Mr. Federico asked if this was correct?

Mr. Connors, Town Planner, clarified that there were some buildings approved under the Gateway District Zoning prior to this building, and they were approved under the same standards, including Starbucks, Chipolte, Porsche and the Kennebunk Savings Bank. Mr. Connors said that the issue is that the Planning Board has the ability to approve waivers to allow the building to be further back from the street. He stated that he believed this is the first building to be located so close to the road.

Mr. Pierce asked if the pre-existing building was sited further back than the new building.

Mr. Connors clarified yes, but it was a very old barn that was about to fall down. It was not a commercial development.

Mr. Pierce asked if there was a motion to vote on a rehearing for case #666. Mr. Caparso made a motion to rehear case #666. Mr. Eastwood seconded the motion. A vote was taken with a yes vote being in favor of a new hearing and a no vote being against a new hearing. Mr. Pierce took a roll call:

Mr. Pierce no, Mr. Federico no, Mr. Caparso, no, Mr. Eastwood, yes.

The vote was 3-1 against rehearing case #666. The motion to rehear case #666 was denied.

5. Other Business:

Mr. Pierce mentioned that Mr. Goulet expressed a desire to resign from the ZBA. He also stated that an application from Francis Macmillan was presented and will be submitted to the Select Board for review.

Mr. Caparso said he would like to return to a regular member role (instead of serving as an alternate). He asked if there was an interview process and this question was deferred to Mr. Moore.

Mr. Moore, Town Administrator, explained that he supports the Select Board in their role, which includes appointing members to all Boards they are responsible for. He went on to explain that there is no formal role of the ZBA in the process of making appointments to it. Mr. Moore explained that there is a policy on the Town website, which is the Select Board's policy on how they handle appointments. He explained that applicants come in, connect with the Board Chair and get feedback from the Board Chair, which is given to the Select Board and they make a decision.

6. Adjourn:

Mr. Caparso made a motion to adjourn the meeting. Mr. Federico seconded the motion. All were in favor and the motion carried unanimously. The meeting was adjourned at 7:27 pm.

Note(s):

1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information, contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.

2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the agenda.