



Stratham Planning Board Meeting Minutes
Stratham Zoning Board of Adjustment Meeting Minutes
May 3, 2023
Stratham Municipal Center
Time: 6:00 pm

Members Present: Thomas House, Planning Board Chair
Mike Houghton, Select Board Representative to Planning Board
Chris Zaremba, Planning Board Member
John Kunowski, Planning Board Member
Nate Allison, Planning Board Alternate
Jameson Paine, ZBA Member
Brent Eastwood, ZBA Member
Frank McMillian, ZBA Member
Bruno Federico, ZBA Member
Nicolas Garcia, ZBA Alternate

Members Absent: David Canada, Planning Board Vice Chair
Drew Pierce, ZBA Chair

Staff Present: Mark Connors, Town Planner

1. Call to Order/Roll Call

Mr. Connors called the meeting to order at 6:00 pm and took roll call.

2. Public Meeting:

Joint training program for the Stratham Planning and Zoning Board

Attorney Cordell Johnston presented the Boards with a training on the Basics for Planning and Zoning Board Members. The presentation included the following:

- Town government organization [i.e., Planning Board establishment, Master Plan, Zoning Ordinance, and Zoning Board of Adjustment (established through the Zoning Ordinance)].
- The Chair and Select Board Representative are voting members of the Board.
- Planning Boards are required by law to meet at least once per month. There is no minimum requirement for Zoning Boards to meet.
- An alternate member cannot serve in the place of the Select Board representative in the event of an absence; only another Select Board member can.
- An alternate member can participate in the meeting and are encouraged to do so, but they cannot vote.
- Up to two members of the Planning Board may also serve together on any other municipal board

or commission, except that no more than one Planning Board member may serve on the local governing body (board of selectmen or council), the conservation commission, or another land use board.

- The ZBA and Planning Board members may sit on both boards, but Mr. Johnston does not recommend it to avoid conflict of interest or bias.
- The Planning Board is responsible for the Master Plan which must be updated every 5 years.
- The Master Plan is a guide to development and is not rules.
- The Planning Board is responsible for proposing the Zoning Ordinance and the amendments.
- The Planning Board is responsible for reviewing subdivision proposals and site plans in accordance with the Subdivision and Site Plan Regulations. The Planning Board can change those regulations with a public hearing.
- The Planning Board issues Conditional Use Permits and Excavation Permits
- RSAs are the laws enacted by the New Hampshire legislature that are the basis for land use regulations. Towns adopt zoning regulations in accordance with applicable RSAs.
- Boards adopt Rules of Procedure that contain a list of officers and responsibilities, meeting schedule, and rules of conduct for meetings and public hearings.
- The NH Office of Planning and Development publishes handbooks for Planning Boards and Zoning Boards that are very useful and intended to be a guide and not legal requirements.
- Board member terms are three years with the officers serving one term as officer and the two remaining years as either the officer or a member.
- A quorum is the majority of the Board present to hold a meeting. Additionally, the Zoning Board requires three votes in the affirmative to approve an application. Therefore if only three members are present, it may be a quorum, but two votes in the affirmative and one vote in the negative is not sufficient.
- Zoning Boards handle administrative appeals (e.g. violations of the Zoning Ordinance), Planning Board appeals, Variances, and Special Exceptions.
- A Variance allows an Applicant to do something not allowed in the Ordinance.
- A Special Exception is granted for a use that is not allowed by right. A Special Exception does not override the Ordinance and is specifically authorized in the Ordinance under specific criteria.
- All meetings are open to the public. Public meetings are different from public hearings. Public meetings only require 24-hour public notice of the meeting in two places. Applications are presented in public hearings. Public hearings require certified mailings to applicants, abutters, and certain others and notice to the general public by publication in a newspaper. If a subset of board members meet to discuss something, that is considered a public meeting and notice must be completed.
- There are deadlines for making decisions. The Planning Board has 65 days after the application is accepted as complete. The Zoning Board has 90 days after the application was received. If more time is needed, the Applicant can waive their right for a decision to avoid a denial and a re-filing.
- The Boards do not have enforcement authority of the Zoning Ordinance. Complaints should be made to the Code Enforcement Officer or the Select Board.
- Meeting minutes must be made available to the public within five days even if only in draft form.
- Minimum content of meeting minutes includes: (1) names of members present; (2) other people participating (it is not necessary to list everyone present, however); (3) a brief summary of subject matter discussed; and (4) any final decisions reached or action taken.
- Nonpublic sessions can be held for specific reasons such as law suits, to hear legal advice, and the hiring of public employees. Meeting minutes must be made available for nonpublic sessions within 72 hours unless two-thirds of the member present vote to seal the minutes because the release would adversely affect someone's reputation (other than a board member), would render the action

just taken ineffective, or the information pertains to terrorism.

- Disqualification or recusal from a particular application due to conflict of interest occurs if the member is working in a judicial capacity rather than in a legislative capacity.
- A member should recuse himself from a matter when the member is an abutter to the applicant. Additional examples are set forth in RSA 500-A:12 include the member: (a) Expects to gain or lose upon the disposition of the case; (b) Is related to either party; (c) Has advised or assisted either party; (d) Has directly or indirectly given his opinion or has formed an opinion; (e) Is employed by or employs any party in the case; (f) Is prejudiced to any degree regarding the case; or (g) Employs any of the counsel appearing in the case in any action then pending in the court.
- The Zoning Board is a mechanism for relief from the zoning ordinance.
- Zoning Board approvals should be made based on the criteria established for the application and not based on public support or opposition to the project.
- If an application is denied, in order to reapply the second application must be materially different in nature and degree from the first application. For example, the law may have changed or the denial was based on reasons that the new application addresses.
- “Denial without prejudice” allows an applicant to file again.
- An applicant cannot insist on having a hearing delayed until a full member board is available, but the Board can offer that if they apply it consistently.
- Hearings can be continued to another date without additional notice as long as the date and place of the next session are stated at the meeting. There should be no contact between parties and the board members in the interim days. Once the hearing is closed, there should only be deliberation between board members. The hearing shouldn’t be reopened as the public may have left the room assuming the hearing was over.
- Deliberation takes place at a public meeting, not a public hearing. If necessary the Board can seek legal advice before deciding. The Board should not ask or answer questions of the parties during deliberations.
- Deliberations should include specific facts to support the decisions.
- Boards have the discretion to choose between competing expert opinions. If there is only one expert opinion, there must be a reason to reject it.
- A member can draft a motion ahead of time, but cannot circulate it to other members. A motion can be amended, but only one motion can be before the Board at a time.
- Conditions of Approval include “precedent” or “subsequent”. Conditions must be reasonable and relate to the use of the land, not the person who will be using it.
- Land use approvals and conditions run with the land, not the owner, and don’t usually expire. An exception is variances for the disabled may expire when the particular person is no longer in need of the premises. Additionally, variances and special exceptions that are not exercised within two years will expire unless extended for good cause.
- The rules of procedure should specify if a motion is failed or denied by a three member vote where the vote is not unanimous.
- Variances must satisfy five criteria: 1) variance is not contrary to public interest, 2) spirit of the ordinance is observed, 3) substantial justice is done, 4) values of surrounding properties are not diminished and 5) literal enforcement of ordinance would cause unnecessary hardship.
- Unnecessary hardship means there is a special condition that exists on a property that distinguishes it from other properties and the property cannot be used in conformity with the ordinance.
- The Zoning Board must establish a voting method for variances as to whether they vote on each criterion or only discuss the criteria and conduct one vote for the variance as a whole.
- Notices of Decision must include whether the application was approved or denied, conditions of approval, specific findings of fact on the decision, and any deadlines or milestones required.

- Any person aggrieved by a decision can file a motion for a rehearing with the Zoning Board if they want to appeal the decision. The motion must be filed within 30 days after the decision. The Zoning Board must grant or deny the motion within 30 days at a public meeting. The discussion and vote is among board members with no public input. Findings of fact or reasoning is not required for the decision. If the motion is denied, the case can be appealed to superior court or Housing Appeals Board. If the motion is granted, then the case begins again with new public notice and hearing.

3. Adjournment

The meeting adjourned at 8:13 pm.