



**Stratham Zoning Board of Adjustment
Meeting Minutes
March 19, 2019
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Phil Caparso, Full Time Member
Bruno Federico, Full Time Member
Deidre Lawrence, Full Time Member
Amber Dagata, Alternate

Members Absent: Tana Ream, Alternate

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1) Call to Order/Roll Call

Chairman took roll call. Mr. Dolan asked Ms. Dagata to be a voting member for this evening. Ms. Dagata agreed.

2) Approval of Minutes

a. February 12, 2019

Ms. Lawrence made a motion to accept the February 12, 2019 meeting minutes as presented. Mr. Caparso seconded the motion. Motion carried unanimously.

3) Public Hearing

- a. **Case #644, Caroline S. Robinson Trust, 61 and 62 Stratham Heights Rd, Map 02 & 05 Lot 14 & 81 respectively, Residential Agricultural Zoning District.** Represented by Kevin Baum, Hoefle, Phoenix, Gormley & Roberts P.A. The applicant requests a Special Exception per Article 3.6(E)(1 & 4), Section III, to operate as an event venue and rent its land and facilities to a non-profit organization that will operate as "Non-Profit Lodge" and "Private School".

Mr. Dolan explained a letter was received March 8, 2019 from Attorney Baum, included in the board member packets, that requests a continuance to the March 26, 2019 meeting.

Mr. Caparso made a motion to continue this hearing to March 26, 2019. Ms. Lawrence seconded the motion. Motion carried unanimously.

- b. **Case #642, Dorothy Thompson, 217 Portsmouth Ave, Map 21 Lot 88, Residential Agricultural Zoning District.** Represented by Eric A. Maher, Esq., and Bruce Scamman of Emanuel Engineering Inc. The applicant requests a Special Exception per Article 3.6 (B)(1), Section III of the Stratham Zoning Ordinance to permit the applicant to construct 5, 1-bedroom cottages for use as a cottage colony.

Eric Maher, Donahue, Tucker & Ciandella PLLC, representing Dotty Thompson stated the previous hearing was continued to address concerns the board had regarding the October 2018 Special Exception for a Home Occupation approval. Attorney Maher stated there is nothing stated in the minutes that Ms. Thompson or the board agreed to which prevents Ms. Thompson from seeking any other land use approval associated with the property. Attorney Maher explained he requested and listened to the audio of the October 2018 hearing which did not indicate anything said to foreclose this request for Special Exception. The expansion which was discussed in the minutes (Page 2, Line 57 and 60 of the October 2018 minutes) related directly to the Home Occupation into an adjacent building on the site. Attorney Maher explained a definition, when no definition is provided in the zoning ordinance, used by practitioners, courts, and land use boards is the meaning that is pulled from the dictionary. Attorney Maher stated Webster's Dictionary defines:

Colony: "a group of individuals or things with common characteristics or interests situated in close association". Example: *artist colony*

Cottage: "a usually small house for vacation use"

Attorney Maher explained the proposed use falls within those definitions and is a grouping of five (5) small, vacant structures that will be used for vacation purposes, located in close proximity, and all in similar characteristic and design. Attorney Maher stated he understands the board's previous concern related to defining "cottage colony" but does not believe the board will need to define it as Section 3.6(B)(1) states "overnight/day camps, cottage colonies, vacation resorts, and similar recreational facilities". Attorney Maher stated the use being requested is sufficiently similar to the other uses listed. Attorney Maher stated the February 12, 2019 hearing did not raise much concern with regard to many of the criteria and it appears the concern was regarding potential impact of abutting properties associated with either noise or other characteristics of this use. Since the February 12, 2019 meeting Attorney Maher met with Mr. Wolph and Mr. Austin, Town Planner, for the applicant to come up with a list of proposed conditions that would allow for this proposed use to best meet the criteria for a Special Exception. The "draft " conditions of approval were submitted to the board through the chair on March 13, 2019, which include maximum occupancy which will be set forth according to the State of NH Building Code; the same guests will not be allowed to rent a cottage for a period of time greater than permitted in the Stratham Zoning Ordinance; a provision for regular inspections by the Code Enforcement Officer; a condition of prepared "rules and regulations" for cottage use; a driveway permit to be issued from NH DOT; vegetative buffers will be maintained on both the front and rear of the property; and an approved DES septic permit will be submitted for installation of new septic systems associated with the cottages. Attorney Maher submitted an aerial photograph to the board, prepared by Mr. Scamman, which demonstrates the distances between various structures on the property. Attorney Maher explained the applicant is seeking a Special Exception for a "cottage colony" which is low intensity in nature and they are not seeking any land use approval related to agri-tourism use. Attorney Maher asked the board to consider this application against the six (6) established criteria for a Special Exception in Section 17.8.2(c) of the town Zoning Ordinance.

97
98 Mr. Dolan asked Mr. Wolph for a staff report. Mr. Wolph stated the reviewed minutes from
99 the October 2018 meeting found no conditions would prevent the applicant from utilizing other
100 portions of the property for additional use. Mr. Wolph read the part of the approved minutes
101 the board was concerned about. Staff stated the applicant used the proper section of the
102 Zoning Ordinance for the submitted application and the use they are looking to achieve is in
103 Section B. Mr. Caparso questioned what the maximum occupancy number is for this use. Mr.
104 Wolph explained the size of the one-bedroom cabin with the living room area proposed would
105 fit three (3) adults or two (2) adults and two (2) children.
106

107 Mr. Dolan asked the board for any comments or questions. Ms. Lawrence asked if a trash
108 storage was discussed at the planning board level. Attorney Maher stated yes, and it is his
109 understanding there will be a required dumpster on site to be screened from the road. Ms.
110 Dagata asked for clarification of the size and shape of the lot. Mr. Dolan asked if the new
111 driveway permit from DOT is an additional driveway cut to the existing two (2). Attorney
112 Maher stated no, DOT requested an application due to the increase of anticipated use. Mr.
113 Federico asked if staff reviewed the "rules and regulations". Mr. Wolph stated yes. Attorney
114 Maher handed the DRAFT "Farm Stay Cottages Rules and Regulations" for the board's
115 review. Ms. Lawrence questioned if the cottages would be ADA compliant. Attorney Maher
116 stated the applicant will comply with any requirements required by local and state building
117 codes. Mr. Dolan asked if staff reviewed the rules and regulations and if there are any
118 concerns. Mr. Wolph explained the rules and regulations were reviewed by himself and Tavis
119 Austin, Town Planner, and both felt they were applicable and recommended the board adopt
120 them as condition of approval. Mr. Dolan requested the "DRAFT Rules and Regulations"
121 submitted this evening be added as part of the record for this application. Mr. Federico
122 reminded the board this list is a "work in progress". Ms. Lawrence agreed and stated there are
123 some aspects that go beyond what would be considered a "condition" of approval". Mr.
124 Wolph stated it doesn't make sense for the board to read into the record, i.e. "credit cards are
125 welcome" and adding all these rules and regulations would not be appropriate for the approval.
126 Attorney Maher stated the lights proposed have been before the planning board and will be
127 motion activated and dark sky compliant.
128

129 Mr. Dolan opened the hearing up for public comments in "favor" of this proposal. Hearing none,
130 Mr. Dolan opened the hearing up for public comments in "opposition" of this proposal. Hearing
131 none, Mr. Federico made a motion to close the public hearing. Mr. Caparso seconded the motion.
132 Motion carried unanimously.
133

134 Mr. Caparso stated concerns with the continual eroding, east of the rotatory, which will continue to
135 change the essential characteristics of a residential neighborhood and traffic safety. Barker Farm,
136 located across the street, is already difficult to enter/exit and adding the equivalent of 15 adults
137 entering and existing across the street may cause issues. Mr. Caparso voiced concern with adding
138 motel-like environments that will increase the stress on the police department. Mr. Caparso
139 explained this proposal changes the essential characteristic of the neighborhood and makes it more
140 commercial. The town has dealt with this in the past and Mr. Caparso has concerns that this will
141 continue the downward trend to a blended residential/commercial property. Ms. Lawrence
142 questioned if signage is proposed for the cottage colony. Attorney Maher stated there is an existing
143 sign at the front of the property and no additional signage is being proposed. Attorney Maher
144 explained a limitation of one (1) car per cabin will be in place, which is a condition of the planning
145 board approval. Mr. Wolph explained the planning board conditions are listed in the staff review
146 submitted for this application. Ms. Lawrence stated she does not see anything in the record that the

applicant doesn't satisfy the requirements of the special exception with conditions. Ms. Lawrence stated five (5) vehicles is no more traffic than someone having a family gathering or barbecue at their house. Ms. Lawrence asked staff if the police department had any comments regarding this application. Mr. Wolph explained town department head comments are handled at the planning board level, the police department is aware of this application and has not brought any concerns forth. Ms. Lawrence agreed with staff that in order for this to be permitted as a cottage colony that it must be a transient nature. Ms. Lawrence voiced concern that more specificity be added to assure no abuse of the 30-day limitation will occur and noise/quiet hours be limited as a condition. Mr. Caparso stated this application changes the essential characteristic of a residential neighborhood. Mr. Dolan stated there are two other properties on that section of road, east of this location, a land clearing operation and Executone which was a business office, so this neighborhood is not strictly residential. Ms. Dagata questioned if there is a limit to dwellings per property size. Mr. Wolph explained the staff review explains the "lot fill" and the applicant is in compliance. Ms. Lawrence questioned what happens if Phase II of this proposal is not completed within the 2-year period. Mr. Wolph stated there will be two stages with regard to building of the structures, but the use would go into effect immediately. Once the use is in effect permission is granted to construct the cottage colonies.

Mr. Dolan asked the board for any conditions to be included with this application. The board voted on the following the criteria for Special Exception:

- i. Standards provided by this Ordinance for the particular use permitted by special exception;

Mr. Dolan stated this particular application is permitted under Special Exception.

Votes: 4 Yes, 1 No

- ii. No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials;

Votes: 5 Yes

- iii. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking area, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

Ms. Lawrence and Mr. Dolan voted in favor subject to conditions to be adopted by the board.

Votes: 4 Yes, 1 No

- iv. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

Votes: 4 Yes, 1 No

- v. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools;

Votes: 5 Yes

- vi. No significant increase of storm water runoff onto adjacent property or streets.

Votes: 5 Yes

The board discussed the conditions of approval below:

1. The maximum occupancy of the cottages located on the Property shall be as specified by all present and applicable state and local building codes.

Votes: 5 Yes

2. The same guest shall not be allowed to rent a cottage for a period of time greater than the period permitted by the Town of Stratham Zoning Ordinance.

Ms. Lawrence stated the nature of this use should be transient and the cottages cannot be rented for a period more than 30-days. Ms. Lawrence would like to make it clear that the guests not be allowed to rent any cottage on the premises for a period of time greater than the period permitted by the Town of Stratham Zoning Ordinance and no back to back rentals will be allowed. The board made changes to condition #2 to read:

The same guest shall not be allowed to rent any cottage for a period of time greater than 30 consecutive days within any 60-day period.

Votes: 5 Yes

3. Access shall be provided to the Town of Stratham's Code Enforcement Officer onto the Property for quarterly inspections to determine compliance with all applicable codes, ordinances, and conditions of approval. Access to the Code Enforcement Officer shall be provided to any unoccupied cottages during said inspections.

Votes: 5 Yes

4. On a quarterly basis, access to the ledger books associated with the rental of the cottages shall be made available to the Town of Stratham's Code Enforcement Officer to determine compliance with all applicable codes, ordinances, and conditions of approval.

Votes: 5 Yes

5. Rules and regulations shall be prepared and enforced with regard to the conduct of guests in the cottages. Said rules and regulations shall be posted inside of each cottage. Copies of such rules and regulations that are in effect, and any revisions thereto, shall be provided to the Code Enforcement Officer.

Ms. Lawrence requested this condition commit the applicant to "quiet hours" to limit the amount of noise in keeping with the nature of the neighborhood. Ms. Lawrence recommended "noise and conduct" be listed as a condition.

Votes: 5 Yes

- 239 6. This approval is conditioned upon the New Hampshire Department of Transportation issuing
240 a driveway permit to allow for the use on the Property.

241
242 Votes: 5 Yes

- 243
244 7. The applicant shall maintain the existing vegetative buffers located along Portsmouth Avenue
245 and located boundary line adjacent to Tax Map 21 Lot 94.

246
247 Votes: 5 Yes

- 248
249 8. Guests and their visitors must be respectful of other guests. Guests should not engage in
250 loud or offensive conduct and must not use offensive language outside of the cottages.
251 Quiet hours are between 10:00 pm and 7:00 am and guests should limit noise and outdoor
252 activities during quiet hours so as to not disturb the quiet enjoyment of other guests and
253 neighbors. Guests shall not violate any local, state, or federal laws during their stay and
254 while using the property.

255
256 Mr. Federico requested quiet hours be 10:00 pm and 8:00 am. Attorney Maher stated
257 concern with those hours since it is a farm and feeding and caring for the animal's starts
258 early in the morning. The board agreed the quiet hours to be 10:00 pm and 7:00 am.

259
260 Votes: 5 Yes

- 261
262 9. No pets to be allowed for guests.

263
264 Votes: 5 Yes

- 265
266 10. All alcohol beverages shall be consumed inside the cottage and no intoxication outside of
267 the cottage will be permitted.

268
269 Mr. Wolph stated the Code Enforcement Officer will not be enforcing this condition, this
270 will have to be enforced by the Police Department.

271
272 Votes: 5 Yes

273
274 Mr. Dolan stated the Special Exception is GRANTED with the ten (10) conditions noted
275 above as part of the approval.

276
277 Votes: 4 Yes, 1 Opposed

278
279 Mr. Dolan reminded the applicant there is 30-day period for appeals at which time any
280 work to be done during this time is at the risk of the applicant.

- 281
282 c. **Case #645, Lindt & Sprungli (USA) Inc, One Fine Chocolate Place, Map 03 Lot 01,**
283 **Industrial Zoning District.** Represented by Joshua Fenhaus of AECOM Hunt. The applicant
284 requests a Variance per Article 4.3(e), Section IV of the Stratham Zoning Ordinance to permit the
285 applicant to exceed the 35' height restriction.
286

Mr. Wolf stated the applicant is submitting this Variance application and will need to formally withdraw the Special Exception application discussed at the previous meeting.

Josh Fenhaus, AECOM Hunt, stated the applicant submitted a request to withdraw the Special Exception application via emailed dated March 6, 2019 and would like to formally request withdrawal of the Special Exception application, Case #643, previously submitted. Staff asked for the request to be acknowledgement and read into the record.

Josh Fenhaus, AECOM Hunt, stated the applicant is requesting a Variance to exceed the 35 ft. height restriction at One Fine Chocolate Place in Stratham. Mr. Fenhaus explained Lindt & Sprungli is expanding for growth and optimization use. The variance requested is a height variance from Article 4.3(e), Section IV, of the Stratham Zoning Ordinance. The variance being requested is for height of the proposed improvements in excess of 35 ft. as per Article 4.2. The variance will be for the mass tower currently proposed at 100 ft., the BE building expansion at 47 ft., the AE building expansion which varies from 47 ft. to 54 ft. in height, the sugar silos with a height of 90 ft., the current proposed parking structure of 56 ft., and the liquor plant RTO duct at approximately 76 ft. Mr. Fenhaus asked the board to refer to Sheet MC-103 in the documents provided which show the proposed structures as described. Mr. Fenhaus explained the plan to the board. Jim Borsh, 6 Green Vale Drive, questioned what a RTO duct was. John Pelletier, Director of Engineering, explained what an RTO duct does. Mr. Dolan reminded those in attendance to allow the applicant to make their presentation and then the hearing will be opened up for public comment. Mr. Fenhaus stated the facts supporting the Variance request criteria as follows:

- 1a The height variance is necessary to support the gravity fed manufacturing processes and for optimization of the site and facility.
- 1b The facility is located within the Industrial Zone for its intended use. The proposed improvement heights are necessary to the manufacturing processes. The existing buildings on site are in excess of 35 ft. The proposed new improvements would not be out of character with the surrounding buildings.
2. The facility is located within the Industrial Zone and is consistent with current and intended use for the Industrial Zone. Including as noted in Section 3, Article 3.5 and Table 3.6 Item G.
3. The facility is located within the Industrial Zone and is consistent with current and intended use for the Industrial Zone. Including as noted in Section 3, Article 3.5 and Table 3.6 Item G.
4. The facility is located within the Industrial Zone use is consistent with current use and the height is necessary to support growth and optimization.
5. The facility is located within the Industrial Zone and is consistent with current and intended use for the Industrial Zone. The proposed improvements would not be out of character of the surrounding buildings. Existing buildings on site are in excess of 35 ft.

Mr. Fenhaus stated previous drone footage was submitted to show sight lines from the proposed structures at 100 and 90 feet. Dave Lanning, Lead Architect for AECOM, explained the drone footage. As part of the project the applicant has incorporated cost allowances should any neighbors have issues with sound, noise or odor to fix any issues brought forth.

Mr. Wolph stated staff's review explains the ZBA's duty is only to consider the height restriction and not the expansion as a whole, which is the duty of the planning board. Ms. Dagata questioned if the buildings will be visible from the neighborhoods where the drone footage was taken. Mr. Lanning stated from the perspective at 100 ft. looking from the site out no tops of the residence are visible.

Mr. Dolan opened the hearing up to the public for comments in “favor” of this proposal. Hearing none, Mr. Dolan opened the hearing up to public comment in “opposition” of this proposal.

Mark Devine, 4 Green Vale Drive, also representing the Vineyards. Mr. Devine questioned the perspective view and stated the 90 ft. and 100 ft. proposed structures should be shown to view. Mr. Lanning stated that perspective was done. Mr. Devine asked if there is noise associated with the proposed RTO duct. Mr. Devine stated the abutters have experienced noise issues in the past with the liquor plant. Mr. Devine stated noise conditions were attached to the 2015 planning board approval for the addition which addressed the liquor plant and the noise. Mr. Devine also questioned if there was going to be noise from the mass tower and sugar silos. Mr. Fenhaus stated there is currently a thermo oxidizer in operation for the liquor plant and this will be replaced with a regenerative thermal oxidizer which is same concept but different type of technology. Mr. Fenhaus stated full plans would be submitted once the project moves into detailed engineering. Mr. Devine stated the abutters are concerned with getting approval without knowing the full potential of noise impact. Mr. Caparso asked Mr. Devine if he is concerned about the current noise issue or that it will become worse with an extended building height. Mr. Devine stated the noise concerns have not been fully addressed and it’s a grave concern that the noise will become worse.

Kevin Joyce, 3 Erik Way, stated he and his wife are looking to purchase a home in Rollins Farm development and stated the drone footage was not helpful as it was coming from the site as opposed to the location of a potential home. Mr. Joyce questioned if plans of the scope of the project are available. Mr. Fenhaus stated yes but the proposal is still in conceptual phase. Mr. Wolph explained to Mr. Joyce that this hearing is for the height restriction only and those questions would need to be brought before the planning board. Mr. Joyce asked what current building the parking garage will be attached to. Mr. Fenhaus stated the parking garage will be adjacent to Building C.

Jim Borsh, 6 Green Vale Drive, questioned what is located at the top of the towers and if there is other equipment operated from there. Mr. Lanning stated the top level holds raw ingredients which are siloed and buffered, they are then dropped into a grain hopper, then dropped into a large mixer which goes through a pre-refiner where the granularity level is determined, then drops to Level 1 and into the horizontal process which processes the chocolate. Mr. Caparso questioned if there is FAA lighting required. Mr. Lanning stated there is no requirement by FAA rules until 200 ft. or more. Mr. Federico questioned if there will be noise emanating from the silos. Mr. Fenhaus explained with the sugar silos the noise will be minimal when dispensed. Mr. Borsh questioned if the proposal is expanding taller buildings will that transmit the noise further out. Mr. Fenhaus said he cannot answer that question nor conduct a sound study for a Variance. Mr. Fenhaus explained when the detailed design is done measures will be taken within the budget and that there are currently sound walls around the mechanical equipment.

Helaine Hemingway, 12 Green Vale Drive, stated Unitil is always cleaning and clearing trees so there’s no guarantee that the line of trees shown will always be there.

Mr. Caparso made a motion to close the public hearing. Ms. Dagata seconded the motion. Motion carried unanimously.

17.8.3 Variances: (Rev. 3/11)

- a. As provided for in NH RSA 674:33-I(a), the Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that the conditions for a variance have been met. The decision of the Board shall be based on the evidence both written and oral

which shall be presented at the hearing and as may be contained in the application. Abutters and residents shall be entitled to present testimony and other evidence to establish that the applicant either has or has not met all of the listed conditions as stated below.

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

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

Ms. Lawrence noted, for the record, that the applicant has stated the facility is located currently within an Industrial Zone so the variance sought for the various improvements, with regard to height, is consistent with the current and intended use of property in an Industrial Zone. Based on this information the Variance will not be contrary to public interest.

Votes: 5 Yes

ii. The spirit of the ordinance is observed.

Ms. Lawrence stated based on the prior finding, the spirit of the ordinance is observed.

Votes: 5 Yes

iii. Substantial justice is done.

Mr. Dolan stated substantial justice is done in granting this variance. Ms. Lawrence stated there is no evidence that the benefit to the applicant would be outweighed by harm to the general public. The concerns brought forth tonight are potential visual impact which will be occurring in an existing large industrial facility. Mr. Caparso and Ms. Lawrence agreed this would be approximately 10 percent increase in the area to an existing industrial facility. Ms. Lawrence stated there is no evidence of public harm.

Votes: 5 Yes

iv. The values of surrounding properties are not diminished, and

Mr. Caparso stated there was no expert testimony which was conclusive to prove property values are not diminished.

Votes: 5 Yes

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

1. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

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

Ms. Lawrence explained the applicant has stated the facility is located in an Industrial Zone, given its intended use and the proposed improvement heights are necessary to the manufacturing process. Ms. Lawrence stated the applicant explained a tower has to be a certain height because the process it entails needs and relies on gravity. The applicant also stated the existing buildings on site are in excess of 35 ft. and the improvements would not be out of character for surrounding buildings.

- b. The proposed use is a reasonable one.

Ms. Lawrence stated town records show prior height variance approvals granted for this property as stated in staff's memorandum dated March 15, 2019. Ms. Lawrence stated that given the nature of the operations on the property, with regarding to (a), there are existing buildings and structures on the property that are in excess of 35 ft. there is no fair and substantial relationship between that 35 ft. height limitation as applied to this particular property.

Mr. Dolan explained the height restriction in Zoning Ordinance was written for life safety purposes, and that the fire department's ladder truck only reaches 35 ft. Mr. Dolan stated on the basis of the life safety code establishment of the height restriction and this structure being an unoccupied space the criteria is met.

Votes: 5 Yes

Mr. Dolan stated the applicant met the five (5) criteria for GRANTING a Variance by a unanimous votes and explained to the applicant there is a 30-day period for challenging the issuance of the Variance. If the applicant chooses to continue to move forward during this time they are proceeding at their own risk.

4) Other Business

Motion to remove the November 12, 2019(Voting Day) and the December 24, 2019(Christmas Eve) ZBA meetings from the schedule.

Mr. Federico made a motion to remove November 12, 2019 and December 24, 2019 from the ZBA meeting schedule. Ms. Dagata seconded the motion. Motion carried unanimously

5) Adjournment

Mr. Caparso made a motion to adjourn at 9:35 pm.