



**Stratham Zoning Board of Adjustment
Meeting Minutes
April 28, 2020
Virtual Meeting/ Conference Call
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Bruno Federico, Full Time Member
Drew Pierce, Full Time Member
Phil Caparso, Full Time Member
Richard Goulet, Alternate
Tana Ream, Alternate

Members Absent: Amber Dagata, Full Time Member

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

1. Call to Order/Roll Call

Chairman Dolan called meeting to order at 7:10 PM and took roll call.

2. Approval of Minutes

a. March 24, 2020

Mr. Dolan reviewed the minutes with the Board. Mr. Dolan recognized Mr. Goulet as a voting member. Mr. Pierce, Mr. Caparso, Mr. Goulet and Ms. Ream recused themselves from voting on the minutes because they were absent for the March 24th Meeting.

Mr. Federico made a motion to approve the March 24, 2020 meeting minutes as presented. Mr. Dolan seconded the motion. Mr. Dolan took roll call: Dolan Aye; Federico Aye.

3. Public Hearing(s)

- a. Case #653, Sherrie Zirkle, 25 Bunker Hill Ave, Map 13 Lot 125, Residential Agricultural Zoning District, represented by Sherrie Zirkle of 25 Bunker Hill Ave, Stratham, NH. The applicant requests an Equitable Waiver of dimensional requirements from Section IV, Article 4.2 of the Stratham Zoning Ordinance to allow a 34" encroachment of an existing garage onto the required 20' property line setback.**

Mr. Dolan asked Sherrie Zirkle to speak to her application.

Mr. Pierce recused himself because he is an abutter.

Mr. Dolan assigned Ms. Ream to be a voting member.

Mr. Wolph said that Ms. Zirkle responded to the questions that the application form asked for.

Ms. Zirkle said that she was living in California at the time of the purchase of the property. She hired a contractor to demolish and rebuild a new, larger garage on her newly purchased property prior to moving to New Hampshire. The contractor was to take care of all permits and building requirements and build the garage before she moved. She said she was communicating with the contractor periodically meaning a few times a week. He never mentioned any issues he had with the siting of the garage, any setback requirements, and he reported constantly that everything was fine.

After the garage was almost complete, the contractor said he had been a little nervous about where the exact setback line was, but that the garage had passed inspection and a permit was issued. He never mentioned that there was a problem that would require a variance. Ms. Zirkle said long after the garage was built, she found out through the Building Inspector that the permit did not mean that she didn't need a variance and that she would still need one.

She said in hindsight she believed the problem was that the existing well cap was in the way of moving the garage closer to the house and well out of the way of the setback. She believes the contractor just blew it off and forged ahead, leaving her to deal with the problem long after he was gone.

Ms. Zirkle said a small portion (34") of the garage back corner is in the 20' setback of the adjacent wooded (natural forest) parcel owned by the Town of Stratham. She thinks the parcel was donated to the Town because it is too small to be built on. She does not think her encroachment will have any noticeable or damaging impact on any potential use of the land.

Ms. Zirkle said that the cost to tear down the back/side portion of the garage and rebuild would be about \$17,000 and would affect the value/use of the garage.

Mr. Dolan said that if she is satisfied with her case, he will open the Board to questions.

Mr. Federico asked if the Town notified the contractor that he needed to have a variance to build the way he was going to build.

Ms. Zirkle said that she believed the contractor built before the first building inspector came.

Mr. Wolph said this transpired before he was the Town Building Inspector. His involvement was sending out the violation notices. The prior Building Inspector did review the application and sign it. The Building Inspector proceeded to perform inspections and never asked the builder for a foundation certification. That is a document provided by a licensed surveyor to make sure that they are in the boundary of the setbacks. This did not happen until the home was complete. Mr. Wolph reviewed the certification and immediately saw it was out of compliance which is why they are hearing the case. He believes it was missed by the Builder and he believes it was done unintentionally. He thinks it was a mistake that was discovered after the garage was built.

Mr. Federico said that there is nothing they can do because it is not the Builder nor the Owner's fault.

Ms. Zirkle said that the contractor never said anything to her about the violation even after he knew.

Mr. Federico asked who the contractor was.

Ms. Zirkle said his name is Robert Lang.

83 Mr. Federico asked Mr. Wolph if the builder has done other work in Stratham.

84 Mr. Wolph said that he has done other work in Stratham.

85 Mr. Dolan said that he has no further questions. He said requested in the application, since the
86 mistake was not found prior to building, there should be equitable relief.

87 Mr. Caparso asked Mr. Wolph if the permit was pulled and then there were no inspections or if
88 the permit was pulled too late. He asked if Mr. Wolph could walk through the timeline.

89 Mr. Wolph said the applicant applied for the building permit to build the home and the garage,
90 the permit application was found to be complete during review, the plans were sufficient
91 structurally and even setbacks. On the application documentation the setbacks were correct and at
92 the time the existing Building Inspector agreed to signing and giving the okay to build. The
93 applicant also signed that and in every building permit there is a language that says you need to
94 comply with building code and that is a binding contract. Mr. Wolph said that the Builder was
95 building close to the setback line. The problem was that the building Inspector did not ask for a
96 foundation certification right when the foundation was poured. Mr. Wolph said that is protocol
97 because if there is a problem, that's the time to fix it. The foundation certification was not
98 requested and delivered to the town until the structure was complete.

99 Ms. Ream said she has no questions.

100 Mr. Goulet said he has no questions.

101 Mr. Dolan asked if there are any members of the public who would like to address the
102 application.

103 Mr. Caparso made a motion to close the public hearing and Mr. Goulet seconded. Mr. Dolan took
104 roll call: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Ream, Yes.

105 Mr. Dolan said that the variance for the equitable waiver of dimensional requirements from
106 Article 4.2 of section IV in the Stratham Zoning Ordinance.

107 Mr. Dolan said on page 6 of the application Ms. Zirkle answered the questions from the Zoning
108 Ordinance.

109 Mr. Dolan read the questions from the application:

110 2. Explain how the violation was not noticed or discovered by any owner, former owner, owner's
111 agent or representative, or municipal official, until after structure in violation had been
112 substantially completed, or until after a lot or other division of land in violation had been
113 subdivided by conveyance to a bona fide purchaser for value.

114 Mr. Dolan took roll call for approval on question 2: Dolan Yes; Federico, Yes; Caparso, Yes;
115 Goulet, Yes; Ream, Yes.

116 3. A) Explain how the violation was not an outcome of ignorance of the law or Ordinance, failure
117 to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent
118 or representative, but was instead caused by either a good faith error in measurement or
119 calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or
120 applicability made by a municipal official in the process of issuing a permit over which that
121 official had authority.

122 Mr. Dolan took roll call for approval on question 3: Dolan Yes; Federico, Yes; Caparso, Yes;
123 Goulet, Yes; Ream, Yes.

4. Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of the property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

Mr. Dolan took roll call for approval on question 4: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Ream, Yes.

5. Explain how, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that hit would be inequitable to require the violation to be corrected.

Mr. Dolan took roll call for approval on question 5: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Ream, Yes.

Mr. Federico made a motion to grant the equitable waiver in regards to Ms. Zirkle's application regarding an equitable waiver of dimensional requirements from Article 4.2 section IV of the Stratham Zoning Ordinance to allow a 34" encroachment on a 20' setback for the corner of a garage. Mr. Goulet seconded the motion.

Mr. Dolan took roll call: Dolan Aye; Federico, Aye; Caparso, Aye; Goulet, Aye; Ream, Aye.

Mr. Dolan said there is a 30-day waiting period for any abutter to take court action that they deem necessary.

b. Case #654, Cynthia M. Gibb, 8 Orchard Hill Rd, Map 05 Lot 72, Residential Agricultural Zoning District, represented by Cynthia M. Gibb of 8 Orchard Hill Rd, Stratham, NH. The applicant requests a Special Exception as specified in Section V, Article 5.13 of the Stratham Zoning Ordinance to allow a Home Occupation: The proposed use is a Wellness Studio.

Ms. Ream recused herself because she is an abutter.

Cynthia M. Gibb introduced herself to the Board and explained her application. She is seeking a special exception as specified in Section 5 Article 13 of the Zoning Ordinance to permit a home occupation. The proposed use is as a Wellness Studio offering private 1:1 nutritional counseling, personal training Yin Yoga and Barre instruction, energy work sessions (Reiki), guided meditation. This would be a part-time and hours by appointment only (no set "open" hours). She is interested in collaborating with other practitioners within the Stratham community to offer fun, relaxing small-group workshops, perhaps on a monthly basis. She said her proposal meets the special exception criteria as specified in Article XVII, Section 17.8.2 of the Zoning Ordinance.

Ms. Gibb read each criteria and read her answer to each question:

1. The proposed use meets the standards provided by this ordinance for the particular use permitted by special exception because:

This part-time business use would be clearly secondary to their residential usage. All conditions will be met.

A) The total acre occupied for business use is less than 25% of the total square footage of the entire residence, including the finished basement. Total square footage = 3,871. Total square footage of studio = 868. Therefore, the studio square footage is <23% of the total square footage. Also, the finished garage addition with studio above fits in beautifully with the residential character of the premises within.

B) The home occupation and conduct thereof will be very peaceful, serene and quiet, thereby not

168 impairing the residential character of the premises. There will be no injurious, noxious or
169 offensive odors, fumes, dust, smoke, etc. ever.

170 C) As the owner of the residence, she will be the only one working within the home occupation.
171 She will continue to reside onsite, and it is her residence primarily, part time place of
172 business, secondarily.

173 D) She is looking for the special exception to be granted only for the aforementioned use and
174 nothing else. Should she not utilize the space for its proposed use for 12 months, she
175 understands it will expire, and she understands she must re-apply for reinstatement.

176 E) There will be no one outside the immediate family, nor anyone in the family employed or
177 engaged in the conduct of the business, other than herself.

178 F) There will be no accessory building storage or exterior storage necessary for this proposed
179 use.

180 G) She is unsure as to whether she will sell any accessory finished goods, however, she
181 understands that if she does, they will be sold and stored in the allowed home occupation
182 space only.

183 H) There will never be any regular or frequent service by heavy commercial trucks greater than
184 26,000 pound gross vehicle weight.

185 I) There is sufficient off-street parking in their driveway for clients. There will be no business
186 vehicles. Any required deliveries will be in keeping with that of a residential delivery, and
187 never outside of the 7am-7pm time slot.

188 J) The business is not contrary to any covenants or conditions contained on the deed to the
189 property.

190 K) No signage is required or desired.

191 2. No Hazard to the public or adjacent property on account of potential fire, explosion, or release of
192 toxic materials will result because:

193 No fire, toxic materials or anything that would potentially cause an explosion will ever be utilized
194 with the provision of any of her offered services.

195 3. No detriment to property values in the vicinity or change in the essential characteristics of a
196 residential neighborhood on account of the location or scale of buildings and other structures,
197 parking area, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration,
198 or unsightly outdoor storage of equipment, vehicles or other materials will occur because:

199 Her services will be offered in their newly build studio above new detached 2-car garage which
200 actually increases the property value. It looks very residential, in keeping with the neighborhood.
201 None of the above listed pollutants (or any unlisted pollutants) will ever be present.

202 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in
203 the vicinity as a result of the proposal because:

204 She plans to see clients one at a time and by appointment only. They will utilize their existing
205 driveway to park. If hosting a workshop, participation will be limited to 5 or less and if vehicles
206 to happen to spill into the street, it would be no different than if they had guests visiting who
207 parked on the street. She should mention that there infrequent workshops will be no more than 2-
208 3 hours in length at most.

209 5. The use will not result in the excessive demand on municipal services, including, but not limited

to, water, sewer, waste disposal, police and fire protection, and schools because:

Due to the small amount of clients on the premises, water and sewer usage will be minimal. There will be no reason or occasion to use more water than normal. Police and fire protection will also remain unchanged, and there will be no impact on schools.

6. There will be no significant increase of storm water runoff onto adjacent property or streets as a result of the proposed use because:

Storm water runoff onto adjacent property if streets will remain unchanged from current residential runoff.

Ms. Gibb said with regard to the 8 abutters, she has received comments from 6 of them, all voicing support for her business. She read the comments:

From Kimberly and Joshua Cooper at 9 Orchard Hill Road: Hi Cindy, I wanted to let you know that we both support your home business, you've always been a super considerate neighbor, I hope it goes really well. Your addition looks nice too. As far as we're concerned you are wonderful neighbors who could do whatever you wish.

From Melissa and Seth Gahr at 5 Orchard Hill Road: I am so excited for you, that garage is looking awesome, sounds like a fun endeavor for you. I will love Barre classes.

From Elain and Rick Hayden at 6 Apple Way: Hi friend, I just picked up the very short letter from the Zoning Board, no problem at 6 Apple Way with having your wellness studio.

From Greg and Chelsey Babbin at 49 Stratham Heights Road: Congratulations on all your accomplishments this year, we're super happy for you and your new business, totally won't bother us and I hope nobody in the neighborhood puts up a stink. Let me know once you have a website, I'll be happy to check it out.

From Bill McCarthy and Ana Egana at 51 Stratham Heights Road: Dear Cindy May, we've received your letter describing your new venture and we wanted to let you know that we have no concerns and wish you luck and success, this sounds very exciting and fulfilling. We also received a letter from the town notifying us of the meeting with the ZBA, please feel free to present this email to the ZBA as a letter of support.

From John Kunowskie and Richard Benefield at 55 Stratham Heights Road: Cindy, thanks for your letter, we got the hearing notice from the town yesterday, so this additional clarification is appreciated. We have no issues or concerns and wish you well on this new venture.

Ms. Gibb said that was all she had to present.

Mr. Caparso asked if they can accept the abutter letters as evidence since they are not part of the packets.

Mr. Wolph said that they received the letters the day of the meeting, according to the statute it is too late to put them into the package because the package had already been on the Town website. However, he can say that he reviewed the letters with the signatures from the abutters. He would advise the Board to do whatever they feel comfortable with.

Mr. Federico asked the applicant if she is only going to have one client at a time.

Ms. Gibb said yes it will be one on one.

Mr. Dolan said that she mentioned that she may have group sessions with 5 or less people.

Ms. Gibb said that she would like to have group workshops once a month with 5 or less people.

Mr. Dolan said the building has a bathroom facility and kitchenette facility with a sink, he asked if

she had all the necessary septic lines.

Mr. Wolph said the building is new and everything is up to state and local building code.

Mr. Caparso asked the applicant about the once a month workshops and if that they are planning to have 5 people or 5 vehicles.

Ms. Gibb said that she would put in writing that there would not be more than 5 vehicles at a time.

Mr. Caparso asked about the square footage of the driveway.

Ms. Gibb said she believed it is about 150 feet in length.

Mr. Wolph said it is 150 feet in length and widens at the top. It is at the end of the cul-de-sac. He believes there is plenty of room for 5 vehicles.

Mr. Pierce asked if anyone else will be working at the location.

Ms. Gibb said that it will just be herself.

Mr. Goulet asked Mr. Wolph if the NEADA requirements are met.

Mr. Wolph said that if the applicant cannot accommodate a client, then she would have to go to them.

Ms. Gibb asked if that law was for home businesses as well.

Mr. Wolph said that he asked the State and they said that their services need to be accessible.

Mr. Dolan asked the Board if there were any other questions.

Mr. Dolan opened it to the public and asked if they had any comments.

Nobody from the public had comments.

Mr. Goulet made a motion to close the public hearing and Mr. Dolan seconded the motion. Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

Mr. Dolan said the public hearing is closed.

Mr. Dolan said with regard to special exceptions, on page 140 of the Zoning Ordinance section 17.8.2, Special Exceptions. The Board shall hear and decide request for Special Exceptions provided for in this ordinance, the Board shall grant requests for Special Exceptions which are in harmony with the general purpose and intent of this ordinance meet the standards of this section. Appropriate conditions as set forth in subsection 17.8.2 (b) may be placed on Special Exception approvals when necessary. The Board shall deny requests for Special Exceptions that do not meet the standards of this section. Special Exceptions shall meet the following standards:

- A. Standards provided by this Ordinance for the particular use permitted by special exception;
Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.
- B. No hazard to the public or adjacent property on account of potential fire, explosion, or release of toxic materials;
Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.
- C. C. 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;

Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

D. No creation of a traffic safety hazardous or substantial increase in the level of traffic congestion in the vicinity;

Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

E. The use will not result in the excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools;

Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

F. There will be no significant increase of storm water runoff onto adjacent property or streets;

Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

Mr. Dolan said Special Exception approvals may be subject to appropriate conditions including the following;

1. Front, side and rear yards in excess of the minimum requirements.
2. Screening of the premises from the street or adjacent properties by walls, fences or other devises.
3. Modification of the exterior features of the buildings or other structures.
4. Reasonable limitations on number of occupants and methods and times of operation.

Mr. Dolan commented that the applicant already agreed to a limitation of 5 vehicles in the driveway and not more than 5 people for group activities.

Ms. Gibb asked if she could have more than 5 people if there are only 5 vehicles.

Ms. Gibb said that she will accept the condition of no more than 5 vehicles once a month.

Mr. Dolan confirmed that her hours will be between 7am and 7pm.

Ms. Gibb said they would be.

5. Designing the premises for proper drainage.
6. Regulations of access drives, sidewalks and other traffic features.
7. Regulation of the number, size and lighting of signs.

Mr. Dolan said with the completion of the Special Exception criteria and 5 votes in the affirmative on all 6 questions, a motion to grant the special exception is in order.

Mr. Caparso made a motion for Special Exception with the criteria outlined with no more than 5 cars once a month and operation hours between 7am and 7pm. Mr. Goulet seconded the motion.

Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

Mr. Dolan said with 5 votes in the affirmative, the Special Exception is granted. He will notify her that someone may appeal the decision of the Board within the next 30 days.

Ms. Gibb thanked the Board.

4. New Business: None.

5. Other Business: None.

6. Adjournment

Mr. Caparso moved to adjourn meeting at 8:35 PM and Mr. Dolan seconded. Motion passed unanimously.

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.