



**Stratham Zoning Board of Adjustment
Meeting Minutes
June 14, 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, Alternate

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. May 24, 2016

Mr. Brett made a motion to accept the minutes of May 24, 2016 as presented. Mr. Caparso seconded the motion. Motion carried unanimously.

3) Public Hearing(s)

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

Mr. Charbonneau explained this application is a continuation. Mr. Mezquita stated a letter from the Conservation Commission, staff report by Tavis Austin, and site walk, requested by

1 the ZBA, has been completed. One of the questions that came up during the site walk was
2 whether there was an alternate location on the property for the parking area and guard shack.
3 Mr. Mezquita showed the Board a site map and explained there is no other location to
4 complete the work. The two areas of impact were looked at during the site walk; the guard
5 house which will widen the existing crossing and the expansion to the existing parking area.
6 Most of the buffers that are being looked at, as part of this application, were previously
7 approved, buffer impacts of two areas that are already the existing parking lot have been
8 previously disturbed inside the wetland, and there is new impact to buffer on the far side of
9 the wetland. Buffer impacts on the guard shack area are already on pavement and the new
10 impacts on the buffers extend over the existing pavement and is already disturbed.

11 Mr. Caparso asked for confirmation that the impact is being requested for traffic safety and to
12 become compliant with the FDA regulations for a secure site; Mr. Mezquita responded "yes".
13 Mr. Caparso asked Mr. Mezquita if the board gave a variance approval on the parking lot that
14 it would mitigate the impact on future expansion and if more parking is required Lindt would
15 have to go up as opposed to out. Mr. Mezquita stated the intention of the parking lot is to
16 configure it so that it is a proper configuration to accept a future deck. Mr. Dolan asked if a
17 stormwater collection system is being put in. Mr. Mezquita stated the existing parking lot
18 goes directly to the wetland, but enclosed drainage will be installed and piped to the
19 stormwater pond. Mr. Caparso stated that building this parking lot will have less impact than
20 the current parking lot with less stormwater going into the current wetlands. Mr. Federico
21 asked for clarification on the map of where the emergency access road is; Mr. Mezquita
22 confirmed the road is out to the back. Mr. Caparso questioned if there will be more growth in
23 terms of parking. Mr. Mezquita stated there is nothing on the agenda, and the only thing in
24 the future that is being looked at is the expansion of the Warehouse but it doesn't impact the
25 employee draw.

26 Mr. Charbonneau asked if there is anyone who would like to speak for the applicant or in
27 opposition; no one came forward. Mr. Caparso motioned to close the public session on Case
28 #632. Mr. Dolan seconded the motion. Motion carried unanimously.

29 Mr. Caparso would like to walk through the criteria, the board agreed. No variance shall be
30 granted unless all of the following conditions are met:

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

32 Mr. Dolan stated the variance will not be contrary to the public interest and the
33 applicant has done a remarkable job mitigating the impacts on their other development
34 of the parcel. Mr. Charbonneau agreed and stated they have also improved the
35 stormwater runoff. Mr. Federico, Mr. Brett, Ms. Lawrence and Mr. Caparso also
36 agreed. Mr. Caparso would like the approval predicated on DES approval.

1 ii. The spirit of the ordinance is observed.

2 Ms. Lawrence stated the spirit of the ordinance is observed, and even though there is
3 going to be destruction of wetlands, there are other aspects being met as best as
4 possible with improvement to stormwater runoff. Mr. Caparso, Mr. Brett, Mr. Dolan,
5 and Mr. Charbonneau agreed.

6 iii. Substantial justice is done.

7 Mr. Dolan stated with conditional approval by DES, substantial justice is done to the
8 property. Mr. Charbonneau agreed that substantial justice is done not only to the
9 property owner, but to the community as well. Mr. Brett stated the Conservation
10 Commission had a request for specific plan for snow storage and removal on the
11 affected site. Mr. Mezquita stated he would work with the town staff to come up with a
12 plan to suit the town. Mr. Caparso, Mr. Brett, and Mr. Dolan stated they are satisfied
13 with DES approval as the final authority.

14 iv. The values of surrounding properties are not diminished.

15 Mr. Charbonneau, Mr. Caparso, Mr. Brett, Mr. Dolan and Ms. Lawrence agreed there
16 are no impacts of surrounding properties.

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

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

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

25 b. The proposed use is a reasonable one.

26 Mr. Caparso stated literal enforcement provision would cause unnecessary hardship
27 due to the retrofit, gateway, has to do with FDA compliance on security as it relates to
28 a food manufacturing facility, as well as traffic flow. Mr. Dolan, Mr. Charbonneau,
29 Mr. Brett and agreed. Mr. Dolan stated with the exception of the emergency access
30 off the back of the site this the only access to the site and the applicant is mitigating
31 the impact as best they can. If the applicant is not granted the access so they can
32 comply with federal approval and traffic flow pattern, they will not be able to operate.
33 Ms. Lawrence agreed and stated it also jeopardizes their operation, they are dealing
34 with DES who has the expertise with the wetlands issues, they are dealing with the

1 FDA who are proposing certain requirements, and the practicality of the site are such
2 they require additional parking and there is no place to put it, and the ZBA that
3 imposes additional preservation of wetlands requirements. Ms. Lawrence stated #1,
4 #2, and #3 of the criteria are all being met. The board unanimously agreed.

5 2. If the criteria in subparagraph 1. Are not established, an unnecessary hardship will
6 be deemed to exist if, and only if, owing to special conditions of the property that
7 distinguish it from other properties in the area, the property cannot be reasonably
8 used in strict conformance with the ordinance, and a variance is therefore
9 necessary to enable a reasonable use of it.

10 3. The definition of “unnecessary hardship” set forth in this section shall apply
11 whether the provision of the ordinance from which a variance is sought is a
12 restriction on use, a dimensional or other limitation on a permitted use, or any
13 other requirement of the ordinance.

14 Mr. Caparso made a motion to GRANT the variance application of Case #632 from
15 Stratham’s Zoning Ordinance, Article 11.5.3(b) (d) to permit the construction of a
16 parking area, new site entrance, and guard house in areas designated as wetland and very
17 poorly drained soil buffer zones with the condition of DES approval. Mr. Brett seconded
18 the motion. Motion carried unanimously.

19 b. **Case #633: Jason Frechette, 18R Scamman Road, Stratham, NH 03885, for**
20 **property located at 18R Scamman Road, Stratham, NH, Tax Map 18 Lot 45&46.** A
21 Special Exception application request from Stratham’s Zoning Ordinance has been filed
22 requesting relief from Section 3.6, Table of Use, to operate a kennel within the
23 Residential/Agricultural Zone.

24 Mr. Dolan made a motion to accept application of #633 as complete. Mr. Brett seconded the
25 motion. Motion carried unanimously.

26 Mr. Frechette introduced himself and stated he currently has 4 dogs and will be adding 2
27 more dogs to his home. He explained he will not be housing anyone else’s dogs, not building
28 a kennel, not breeding his dogs, and that he only uses his dogs for hunting. Mr. Frechette is
29 currently working on becoming a ME and NH guide, and has 950 acres in ME which he
30 spends a lot of time there. He also sends his dogs down south in the winter for training and
31 the dogs are only for hunting purposes. Mr. Caparso questioned how long the dogs have been
32 at 18R Scamman Road. Mr. Frechette explained he’s resided there since July 2015, he had 2
33 dogs when he moved in (a house dog and a hound), and he recently got 2 dogs which are
34 roughly 6 months old. Ms. Lawrence questioned if Mr. Frechette is planning to fence the
35 area where the kennels are. Mr. Frechette explained that possibly in the future, but at the
36 moment he only has runs, and since most of the property is under conservation easement he
37 will have to get permission. The property that is not under conservation easement (the lawn
38 and part of the woods) will be fenced in to let the dogs run. Mr. Caparso questioned how
39 long the dogs are down south. Mr. Frechette stated he drops the dogs off in January and they
40 returned in April. Mr. Charbonneau questioned how long they are actually in Stratham;

1 between Maine and going south for training. Mr. Frechette stated training season in ME
2 starts July 1st and NH is July 15th. Mr. Frechette confirmed he can fence in all areas excluded
3 from the conservation easement and the kennels are within the 5 acre parcel. Mr. Caparso
4 questioned whether the dogs are a condition of Mr. Frechette becoming a guide. Mr.
5 Frechette stated no, but it helps the guiding on his 950 acres in ME and he is not working for
6 someone else. Mr. Caparso asked for confirmation that Mr. Frechette will be up in ME
7 during the fall hunting season and will return with the dogs. Mr. Frechette stated yes, the
8 dogs are working dogs. Mr. Charbonneau asked if the dogs are out at night. Mr. Frechette
9 confirmed they are, and they are down south for part of the winter. Mr. Charbonneau asked
10 about issues with barking day and night. Mr. Frechette stated the little ones bark but will
11 grow out of that and the older ones are like watch dogs and will bark if they see people on the
12 property. There are trails that surround the 5 acre easement piece and when people walk by
13 talking the dogs will bark, and if passing dogs bark, his dogs will bark. When trail folks
14 come up onto Mr. Frechette's property with their dogs, his dogs will bark. Mr. Caparso
15 questioned how many people come on or near Mr. Frechette's property with dogs. Mr.
16 Frechette stated anywhere from 6:00 a.m. until, in the summer, midnight; sometimes there
17 are biker's with headlamps on with their dogs unleashed and the dogs will come onto the
18 property and the dogs will bark. Mr. Caparso questioned how often people are on or near his
19 property; Mr. Frechette stated every day on the conservation piece, all day every day.

20 Mr. Charbonneau asked for confirmation that Mr. Frechette has 4 dogs at this time and
21 will be adding 2; Mr. Frechette stated yes. Mr. Charbonneau asked Mr. Frechette if he
22 would accept a condition put on this special exception that no more than 6 dogs will be
23 allowed; Mr. Frechette stated yes, he is not looking to add or breed dogs. Mr. Frechette
24 walked through the map and the location of the dog houses and runs. Mr. Caparso asked
25 Mr. Frechette what he does for work, Mr. Frechette stated he works for an investment
26 company that owns the 950 acres in ME which is a timber investment. Mr. Brett asked
27 how far back the Frechette's house sits from Scamman Road and the distance to abutters.
28 Mr. Frechette stated the driveway is about 1,000 ft. and the closest abutters are in the
29 development which he can barely see even in the winter when the leaves are gone. On
30 the map submitted in the packet it's almost 900 ft. The closest property line is in excess
31 of 200 ft. and the closest house is over 300 ft.

32 Mr. Charbonneau asked if anyone would like to speak in favor; no one spoke up. Mr.
33 Charbonneau opened the meeting to opposition. Bob & Carrie Freeman, 21 Point of
34 Rocks Terrace stated he did not get notified due to the Stratham land between the
35 properties, but they are physically one of the three closest abutters. Mr. Freeman thanked
36 Mr. Frechette for the trails on the conservation land and the signs stating "leash your
37 dog". Mr. Freeman stated Mr. Frechette's dogs are friendly and goofy, but his dog is not
38 and it can become dangerous for both. Mr. Freeman said the dogs, being hounds, can
39 also be heard, including at night. Mr. Freeman explained it does not serve the public to
40 allow 6 dogs and, as abutters, they are noisy, the dogs get loose, and they are concerned
41 about the value of their property having extra dogs around. Mr. Charbonneau explained
42 the definition of a kennel per the Town of Stratham; residents are allowed 4 dogs and any
43 more than 4 requires a Special Exception. The definition is misleading being defined as a
44 kennel, because it implies commercial use and breeding, but it is only to own more than 4
45 dogs; Ms. Lawrence corrected Mr. Charbonneau stating the number is 5. Mr. Morong
46 read the definition of a kennel from the Zoning Ordinance:

1 2.1.36 “Any premises, site or portion thereof where 5 or more dogs 10 weeks in age or
2 older are bred, raised, trained or kept for any reason. This definition does not
3 include sites that are accessory to a veterinarian hospital where a licensed
4 veterinarian practices or the SPCA (Adopted 3/97).”

5 Phil Lansdale, 27 Scamman Road, stated in the public interest it is perfectly appropriate
6 to have the dogs since Mr. Frechette is a professional guide.

7 Bruno Marbacher, 1 Scamman Road, is concerned there is no limit to the amount of dogs,
8 Mr. Frechette could have 50 dogs and change his mind and have more than 6 dogs.
9 According to the definition there is no limit to how many you can have, so once the
10 approval is given you can have as many as you choose. Mr. Marbacher asked the board
11 if they would set a limit. Mr. Dolan stated Mr. Frechette has already agreed to a limit and
12 it will be a condition set on the approval.

13 Marty Wool, 188R Winnacut Road, asked the board to poll the residents in attendance
14 regarding the noise. Mr. Caparso stated surveying the attendees is not appropriate since
15 there is an existing dog problem in the area and it may or may not be entirely Mr.
16 Frechette’s fault. Mr. Caparso explained there are dogs running this property, not
17 leashed, and are not Mr. Frechette’s. Ms. Lawrence explained that anyone in attendance
18 can speak to the noise factor; Mr. Dolan agreed with Ms. Lawrence and Mr. Caparso and
19 stated the board is willing to hear any complaints.

20 Christian Barone, 18F Scamman Road, stated he also has a problem with loose dogs from
21 hikers and has put sign up regarding leasing dogs. Mr. Barone has asked Seth Hickey,
22 Recreational Director, to try and get the hikers to treat it like a park. Mr. Barone is
23 concerned with the amount of dogs running in his yard while his kids are out, alone and
24 with neighbor kids. Mr. Barone stated he has not had any problems with Mr. Frechette’s
25 dogs. Mr. Charbonneau stated that the town is aware of the issue with the trail and loose
26 dogs.

27 Ray Liston, 22 Point of Rocks Terrace, asked the board how the town checks for
28 compliance with the special exception and clarification on the application where Mr.
29 Frechette lists 6-8 dogs. Mr. Frechette explained he is allowed to let 6 dogs loose for
30 hunting so 6 dogs is what he is asking for; 5 hunting dogs and 1 house dog. Mr. Liston is
31 concerned with how the town will keep track of making sure Mr. Frechette stays in
32 compliance if the special exception is granted. Mr. Caparso stated the town has a full-
33 time code enforcement officer whose job it is to make sure any variance or special
34 exception is compliant.

35 Victoria Mamone, 20 Point of Rocks Terrace, stated she has 2 dogs and there is a lot of
36 barking. She also has 2 children; a 7 year old and a 1 year old who play in the front yard
37 and the back yard, which is fully fenced, and is concerned with safety for the children.
38 Ms. Mamone is concerned with the loose dogs in the park; the noise; and safety of her
39 children.

1 Drew Smith, 25 Scamman Road, stated he came to fight a huge commercial kennel
2 coming into the neighborhood, which is not the case. He can hear Mr. Frechette's dogs
3 but has no concern as there are several dogs in the neighborhood, as well as people
4 mountain biking in the middle of the night. Mr. Smith stated he has no problem with Mr.
5 Frechette having 6 dogs, but is concerned with a commercial kennel in the neighborhood.

6 Marty Wool, stated the problem with off-site dogs should not be Mr. Frechette's issue.
7 Since the problem seems to be the people on the trails at night and unleashed dogs, the
8 residents should take those concerns to the selectman who can enforce the issue.

9 Carrie Freeman, 21 Point of Rocks Terrace, stated she does not have a problem with the
10 additional dogs at Mr. Frechette's, as long as there is a stipulation that the area where the
11 dogs will be is fenced. Ms. Freeman stated her dog is friendly with humans, but not other
12 dogs and it becomes an issue.

13 Patricia Lucy, 14 Scamman Road, stated she can hear the hound noise and is concerned
14 for the safety of children with trained hunting dogs.

15 Betsy Snow, 18 Point of Rocks Terrace, stated there are people who do not like dogs and
16 she feels she lives in a dog park. Ms. Snow has been attacked 3 times by dogs and would
17 like safety issue, fences, and leashes taken into account.

18 Mr. Charbonneau answered a resident's question regarding setback requirements, which
19 is 5 acres and at least 100 ft. from the nearest property line.

20 Linda Pensiero, 19 Point of Rocks Terrace, stated the big issue is not Mr. Frechette and 6
21 dogs, he is responsible, it is the dogs off leashes that are unacceptable. Ms. Pensiero
22 asked about the Town of Stratham "off the leash" rule that has been grandfathered. The
23 Stratham Police have said the trail behind Point of Rocks dogs do not need to be leashed.
24 Mr. Federico explained there are 2 parts to the dogs ordinance, the first part says "a dog
25 must be on a leash" the second part states "if the dog is under voice control it does not
26 need to be on a leash". Several neighbors voiced concern with that ordinance. Mr.
27 Federico stated most of the trails are on private property.

28 Mr. Frechette explained hounds do not fight; he has small children and does not have an
29 issue trusting his dogs; the dogs are on 15 ft. cables that hold up to 150 lb. dog and they
30 have never broken the lead.

31 Paul Bamford, 1 Pond View Drive, stated he heard Mr. Frechette was applying for a giant
32 kennel, which doesn't seem to be the case, but he has concerns regarding safety and
33 noise. There is a daycare across the street from him which causes safety concerns and
34 there is concern with incessant barking.

35 Jim Dolan, 6 Point of Rocks Terrace, does not hear the dogs. He voiced concern that the
36 problem is for the abutters right next to Mr. Frechette and he was relieved to find out this
37 was not going to become a commercial kennel.

1 Donna Pare, 10 Point of Rocks Terrace, stated relief to know there will be no commercial
2 kennel; but the noise is a concern. Mr. Frechette stated the two young dogs are the ones
3 barking because they are puppies and not trained, the two older dogs do not bark unless
4 something comes into the yard, and the two he is attaining (3 years old and 2 years old)
5 are already trained.

6 Paul Bamford questioned Mr. Frechette on whether he addresses his young dogs when
7 they bark, to which Mr. Frechette responded yes; but they are not always barking.

8 Mr. Caparso made a motion to close the public session for Case #633. Mr. Dolan
9 seconded the motion. Motion carried unanimously.

10 The board discussed the Special Exception criteria requesting relief from Section 3.6,
11 Table of Uses, F.10 Kennels with a minimum lot size of 5 acres and a structure setback of
12 a minimum of 100 ft. from all lot lines. Mr. Charbonneau stated the applicant meets the
13 minimum standards according to the Table of Uses.

14 i. Standards provided by this Ordinance for the particular use permitted by special
15 exception. Board agreed unanimously in favor.

16 ii. No hazard to the public or adjacent property on account of potential fire, explosion,
17 or release of toxic materials. Board agreed unanimously that this criteria does not
18 apply to this case.

19 iii. No detriment to property values in the vicinity or change in the essential
20 characteristics of a residential neighborhood on account of the location or scale of
21 building and other structures, parking area, access ways, odor, smoke, gas, dust, or
22 other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of
23 equipment, vehicles or other materials. Mr. Caparso stated this does not apply, but
24 the noise issue is concerning because there is no determination of where the noise is
25 coming from; whether it's from the hounds or the larger public safety issue
26 presented here tonight. Ms. Lawrence stated the only criteria that applies here is the
27 noise. There is a certain level of noise that exists in any residential neighborhood
28 due to dogs, but does the introduction of 2 additional dogs on the existing property
29 create more than what is normally present to be a detriment to property values. Ms.
30 Lawrence does not believe it is an issue. Mr. Caparso stated the dog noises are an
31 issue in this neighborhood, the dogs are everywhere, all over the trail and
32 unleashed, and it's a public safety issue. The dog noises exist and are not being
33 introduced to the neighborhood, and adding 2 additional dogs are not magnify an
34 ongoing dog noise problem. Mr. Dolan would like confirmation as to how Mr.
35 Charbonneau and the board will control the noise, Mr. Charbonneau stated with
36 conditions. Mr. Dolan agreed with Mr. Charbonneau, Ms. Lawrence, and Mr.
37 Caparso that the pesky noise issue in the neighborhood would have no detrimental
38 impact on property values. Mr. Brett stated Mr. Frechette is taking responsible
39 steps to keep his dogs under control and the major issue is the people that come into
40 the area. The board agreed unanimously that there is no detriment to property
41 values.

- 1 iv. No creation of a traffic safety hazard or a substantial increase in the level of traffic
2 congestion in the vicinity. The board agreed unanimously that there is no creation
3 of traffic safety hazard or increase in traffic.
- 4 v. No excessive demand on municipal services, including, but not limited to, water,
5 sewer, waste disposal, police and fire protection, and schools. The board agreed
6 unanimously this does not apply to Case #633.
- 7 vi. No significant increase of storm water runoff onto adjacent property or streets. The
8 board agreed unanimously this does not apply to Case #633.

9 The board discussed the conditions. The number of dogs kept on the property will not
10 exceed 6, the public safety issue is due to outsiders coming into the neighborhood and
11 does not relate to this case. Mr. Caparso stated the tethering is sufficient. Ms. Lawrence
12 disagreed and would like a perimeter fence in the area that the dogs are housed. Mr.
13 Federico stated there is a community concern of the dogs getting loose, and if there is a
14 condition of fencing in the general area where the dogs are that will resolve the safety
15 concern.

16 Ms. Lawrence made a motion to GRANT the Special Exception for Case #633 with the
17 following conditions:

- 18 1. Limitation of 6 dogs total be kept on the premises.
- 19 2. Sufficient fencing to provide enclosure for the 5 mobile dog houses and runs. Said
20 fencing to be completed and inspected by the Code Enforcement officer within 60
21 days of this decision. Mr. Caparso seconded the motion. Motion carried
22 unanimously.

23 Mr. Dolan made a motion to close the public hearing for Case #633. Ms. Lawrence seconded
24 the motion. Motion carried unanimously.

25

26 Mr. Caparso made a motion to adjourn at 9:02 pm. Mr. Brett seconded the motion. Motion
27 carried unanimously.