



**Stratham Zoning Board of Adjustment  
Meeting Minutes  
December 3, 2024  
Stratham Municipal Center  
Time: 7:00 pm**

**Members' Present:** Drew Pierce, Chair  
Brent Eastwood, Vice Chair  
Jameson Paine, Member  
Lucy Cushman, Member  
Frank MacMillan, Member  
Donna Jensen, Alternate

**Members Absent:** None

**Staff Present:** David Moore, Town Administrator

**1. Call to Order/Roll Call**

Mr. Pierce called the meeting to order at 7:02 pm and took roll call.

**2. Approval of Minutes:**

**a. June 4, 2024**

**Mr. Macmillan made a motion to approve June 4, 2024, meeting minutes as drafted. Ms. Cushman seconded the motion. All voted in favor and the motion passed.**

**b. November 5, 2024**

**Mr. Macmillan made a motion to approve November 5, 2024, meeting minutes as drafted. Ms. Cushman seconded the motion. All voted in favor and the motion passed.**

**3. New Business:**

**a. Case #681:** Fox Construction LLC (Applicant) and Charles B. Rocha, III, Trustee of the Charles B. Rocha, III Revocable Trust and Lori J. Rocha, Trustee of the Lori J. Rocha Revocable Trust (Owners) of 23 Winding Brook Drive, Tax Map 16, Lot 1, Zoned Residential/Agricultural within the Wetlands Conservation District and Shoreland Protection District overlays.

Tim Phoenix from Hoefle Gormley & Roberts law firm started the hearing by talking about the lot at 23 Winding Brook and how it was never developed. He talks about the stream that passes through the lot and the protected drainage easement. He adds that there are poorly drained, very poorly drained soils and shoreline protection on the lot. He mentions that they can protect those as best as possible throughout the construction of the new house.

Scott Franklin of New Hampshire Land Consultants mentions that they submitted plans back in November and went to the conservation board for a preliminary meeting back in September. He also mentions that they got their wetland permit approved for the driveway back in August which was

45 approved for a conditional use permit. He states that they applied for a ZBA application for a  
46 variance back in November and they were too they had to go back to the Conservation Commission  
47 which they saw on November 20<sup>th</sup>. He mentions that they are proposing a 2800 SQFT single family  
48 house. They proposed not impacting any of the overlapping no cut buffers and to place placards  
49 around the area and to put drip edge around the house to infiltrate all the runoff along with a letter  
50 from the Wetlands Scientist which mentions a rain garden. He adds that they will not use any  
51 fertilizer with nitrogen and to only use sand on the driveway in place of salt during the winter  
52 months. He mentions that the proposed house is around 93 ft from the stream where 100 ft is  
53 required and about 180 SQFT of the house is within the shoreline protection district along with 45  
54 SQFT of walkway to the front porch. They are also 55.2 feet from very poorly drained soils where  
55 100 ft is required which is about 2048 SQFT of the house.

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57 Mr. Phoenix reads the letter from the Conservation Commission (Con Com) to the Board and also  
58 shows the revised site plans which include the rain garden. He comments about the letter to the  
59 unintentional comments which he feels are a little over the top. He mentions that Con Com mentions  
60 that they voted against supporting the variance and that they never commented on the special  
61 exception, and he assumed that Con Com was against the project and noted the importance of the  
62 migration measures if the ZBA does not grant the variance and that is why the rain garden. He adds  
63 that there was no answer given at the Con Com meeting from the representative about how much  
64 SQFT of the house was in the buffer and he mentions to the Board that every question couldn't have  
65 been answered at the time because it was not known that they needed to provide that for that  
66 meeting. He also adds that in the letter it mentions that the representative declined to respond to the  
67 letters from residents that oppose the construction, which was not true and also add that they didn't  
68 refuse to respond it was that they just didn't have a response to those letters. He mentioned that those  
69 letters were not submitted by abutters and by law he would argue that they can make their  
70 comments, and the Board can give them what weight they decide, if there was litigation, in his  
71 opinion, they wouldn't have the right to proceed, because they're not affected any way different than  
72 the general public. Mr. Phoenix also adds that in the next paragraph of the letter from Con Com, it  
73 states that there are several commission members that stated that they did not believe it was a  
74 buildable lot. He states that the fact is the lot was created back in 1984 as a buildable lot and that  
75 wetland issues were a lot different back then. He talks about an email from Mark Connors that states  
76 that Mr. Connors did not receive a formal letter from Con Com but Mr. Connors stated he was at the  
77 meeting, and he spoke to the fact that Con Com was in favor of the project which is puzzling to Mr.  
78 Phoenix because Con Com was in favor of a driveway that went over wetlands and a culvert that  
79 disturbed the wetlands and that Con Com was not in favor of a house being built in the buffer that  
80 the driveway leads to. Mr. Phoenix then goes on to mention that back in 1984 there were 6 lots in  
81 Winding Brook that were built on with the same circumstances and if this application was denied  
82 that property is left valueless.

83  
84 Mr. Phoenix talks about the special exception requirements which begin with the permitted use of  
85 that property is in fact single family residential which is proposed to be built. The second is that  
86 there's no hazard to the public or adjacent property on account of fire, potential fire, explosion or  
87 release of toxic materials. He states, we've got a single-family home in a single-family district. It's  
88 going to be built fully to code, so there's no hazard any more than anybody else's home on fire,  
89 certainly not explosion or toxic materials. The third requirement is that there's no detriment to  
90 property values in the vicinity and he mentions that this property was created for the main reason to  
91 build a house on it and building a house on that property will increase the values of the properties  
92 around it. Fourth, there's no creation of a traffic safety hazard or a substantial increase in the level of  
93 traffic congestion. He adds that this is the last lot on that development and adding two more cars to

the mix will not change the traffic flow certainly it was anticipated when the lot was created. Fifth, there's no excessive demand on municipal services including water, sewer, waste disposal, police and fire protection. He mentioned that, again, this lot was created with the intention of building a house on the property and this has already been considered. Lastly, no significant increase of storm water runs off onto adjacent property of streets. He adds that there will be drip edge on the house that leads to a rain garden to minimize runoff. He goes on to mention that the lot was created in 1984, the shoreline protection was created in 1985, and the ordinance was created in 2003 that prohibited the disturbance or structures within the shoreline overlay.

Brent Eastwood questioned if those mitigations should be brought to Con Com and David Moore replied that it's expected to have those mitigations and wouldn't think it would be beneficial. Then Mr. Eastwood adds that it does say if the variance is granted then those mitigations will be part of the conditions of approval. Mr. Moore added that the Board should know the location and size of the rain garden and the overall square footage that it will mitigate. Mr. Pierce asked Mr. Frankiewicz why they chose the scale of the rain garden and the mitigation measures that they did. Mr. Frankiewicz replied that the efforts were suggested by the wetlands scientist that they hired. Mr. Frankiewicz describes how the whole rain garden system works.

Mr. Macmillan asked about the comments for the test pits and Mr. Frankiewicz replied that you need 2 test pits, 50 feet apart from each other and 4000 SQFT area with an existing lot of record. He also added that Mike Cuomo, from the Rockingham County Conservation District, stated that they only needed one test pit at least 18in seasonal high-water table.

Mr. Pierce asked about the proposed impervious area within the entire property and Mr. Moore replied, no. Mr. Pierce asked if the garage is part of the 2048 SQFT that is within that 100 ft setback and Mr. Frankiewicz replies yes.

Mr. Frankiewicz mentions that the septic system has been approved and waiting ground mounting analysis and the only two state permits they needed and were approved where the wetlands and the driveway, everything else was through the town. He also adds that the lot loading requirements for the parcel was approved for four bedrooms.

Ms. Cushman talks about the lot not being built on for 40 years and she adds that maybe there is a reason for that for scientific reason to protect the wetlands. She asked Mr. Frankiewicz if there was any consideration to build a smaller house on that lot and he replied, the lot has been owned for 30 years for the possibility of building on that lot for an investment opportunity.

Mr. Phoenix replies to Ms. Cushman's question of building a smaller house. He goes on to say that it should be acceptable to build a similar house to match what exists on that road already.

Mr. Paine asked if a functional analysis was completed, and Mr. Frankiewicz replies that he is not a wetlands scientist and the only protect there should be for the stream. Mr. Phoenix adds that Con Com supported the driveway which is more harmful to wetlands than a house and is surprised that Con Com had no problem with the house being built. He also adds that at the end of Mark Connors email states "These above measures, as well as all erosion and sedimentation practices be strictly adhered to, should be sufficient in the protection of the wetland areas on the site".

Ms. Jensen states that she was surprised that there was no recommendation to not have a lawn because that is one of the biggest contaminations in the wetland and Mr. Phoenix answered that he

has been doing his job for 40 years and has seen few time that people didn't want a lawn and that one of the recommendations is not to use fertilizers and phosphates on the property and there are 5 to 6 others properties around that lot that have lawns and use fertilizers. He adds that not having a lawn and being the last lot, he doesn't see how more detrimental this lawn could be to what's already been going on in the surrounding area for the last 40 years.

Mr. Paine asked Mr. Moore if there is a way to record the restrictions on the deed and Mr. Moore answered yes.

**Mr. Pierce made a motion to open the meeting to the public and all were in favor.**

Mr. Pierce stated there are some emails that should be entered into the record and one of those emails was from Matthew Kushner from 70R Winnicutt Road sent October 16<sup>th</sup>, the other email was sent from Drew Goddard of 1 Sanctuary Drive dated November 2<sup>nd</sup>. Both emails oppose the building on that site.

**Mr. Pierce made a motion to close the public part of the meeting and move to deliberations, and all are in favor.**

The Board opened deliberations by commenting on the criteria that needed to be met for the Special Exception in section 17.8.2.c.

**Mr. Pierce made a motion that the Zoning Board of Adjustment approve a Special Exception with no conditions per Stratham Zoning Ordinance Sections 17.8.2.c to permit the construction of a single-family home within the Shoreland Protection District according to a house plan submitted as Exhibit B of the application and the site layout prepared by New Hampshire Land Consultants revised and submitted December 3, 2024, at 23 Winding Brook Road.**

**Mr. Eastwood seconded that motion. Motion passes 4-1, with Ms. Cushman not in favor.**

The Board discussed special exception for lots of record in section 12.6.4, where they had one concern which was the overall sqft of the house should be changed from 1400 sqft to 2800 sqft as what is represented in the current set of plans that were submitted.

**Mr. Pierce made a motion that the Zoning Board of Adjustment approves a Special Exception in accordance with Section 12.6.4 regarding whether the lot is a lot of record with no conditions.**

**Mr. Paine seconded the motion. Motion passes 3-2, with Ms. Cushman and Mr. Paine not in favor.**

Mr. Pierce announced the Board would move into deliberations and determine if the application meets the variance criteria.

*Criteria 1: The variance will not be contrary to the public interest:*

**Mr. Pierce agrees that it will not be contrary. All agree 5-0**

*Criteria 2: The spirit of the ordinance is observed:*

192 **All agree 5-0**

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194 *Criteria 3: Substantial justice is done:*

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196 **All Agree 5-0**

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198 *Criteria 4: The values of surrounding properties are not diminished:*

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200 **All Agree 5-0**

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202 *Criteria 5: Literal enforcement of the provisions of the ordinance would result in an unnecessary*  
203 *hardship:*

204  
205 **All Agree 5-0**

206  
207 **Mr. Pierce moves that the Zoning Board approve the variance application, submitted by**  
208 **submitted by Fox Construction, LLC from Section 11.5.3.b of the Stratham Zoning Ordinance**  
209 **to allow the construction of a 1,400 square-foot single family home at 23 Winding Brook Road,**  
210 **Tax Map 16, Lot 1, Zoned Residential/Agricultural as the Board determined the application**  
211 **meets all of the variance criteria per the Board's deliberations and subject to the following**  
212 **conditions:**

- 213  
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  1. **Prior to the issuance of a building permit, the applicant shall install erosion control**  
215 **measures to reduce construction-related impacts to the stream and associated wetlands.**  
216 **The Town Planner or its designee shall inspect erosion control measures and determine**  
217 **they are adequate.**
  2. **The final plan shall be stamped by the Certified Wetland Scientist.**
  - 219 **3. Vegetation within 50 feet of the stream and associated wetlands shall remain**  
220 **undisturbed.**
  - 221 **4. If not exercised within two years of the date of approval, this variance will expire on**  
222 **December 3, 2026.**
  - 223 **5. The applicant shall record, on an instrument acceptable to the Town Planner, at the**  
224 **Rockingham County Registry of Deeds, a document stating the obligations of the owner**  
225 **according to the letter from Hurley Environmental and Land Planning, LLC dated**  
226 **December 2, 2024.**

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229 **Mr. Eastwood seconded the motion with all in favor. Motion passed 5-0**

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231 **The Board was presented with the 2025 meeting schedule, and the Board approved the**  
232 **schedule.**

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234 **4. Adjournment**

235 **Mr. Pierce stated that the meeting adjourned at 9:22 p.m.**  
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