



**Stratham Board of Adjustment
AGENDA
November 10, 2020
Time: 7:00 PM**

The public may also access this meeting at the date and time above using this conference call information. Please dial **1-800-764-1559** and input **4438** when prompted for a user pin/code. Please follow the Chair's instructions delivered at the meeting in order to register comments during the public meeting.

If at any time during the meeting you have difficulty hearing the proceedings, please call 603-772-7391 ext. 180.

1. Call to Order/Roll Call/Seating of Alternates

2. Approval of Minutes

- a. April 28, 2020**

3. Public Hearing(s)

- a. Case #655, Philip J. Malone and Stephanie Malone, 72 River Road, Map 08 Lot 38, Residential Agricultural Zoning District, represented by Coughlin, Rainboth, Murphy & Lown, PA of 439 Middle Street, Portsmouth, NH. The applicant is appealing the September 2, 2020 decision of the Stratham Planning Board granting approval of the Cleary subdivision; a minor subdivision application for 7 Boat Club Drive, Tax Map 08, Lot 39 owned by Robert and Stephanie Cleary, pursuant to RSA 676:5, on the grounds stated in the appeal document submitted 10/01/2020.**

4. New Business

5. Other Business

6. Adjourn

Note(s):

- 1. Materials related to the above meeting are available for review at the Municipal Center and 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.



**TOWN OF STRATHAM
ZONING BOARD OF ADJUSTMENT**

10 Bunker Hill Avenue · Stratham, NH 03885

(603) 772-7391 · Fax 603-775-0517

www.StrathamNH.gov

Zoning Board of Adjustment – Appeal From Admin. Decision

FOR OFFICE USE ONLY

ZBA Case Number: 655 Public Notification Date: 10/27/20
Date Application Filed: 10/1/20 Public Meeting Date: 11/10/20
Received By: _____ (Initials Only) Approval/Denial Date: _____
Fees Received: \$325.00 ZBA Decision Date: _____

Section 1. General Information (Please print or Type)

APPLICANT/AGENT

Phone#: 603-617-8895 Fax #: _____

Philip + Stephanie Malone Email Address: philmalone@gmail.com

72 River Road Stratham NH 03885
Street Address Map 8 Lot 38 Town/City State ZIP

PROPERTY OWNER (If different from Applicant)

Phone#: _____ Fax #: _____

Email Address: _____

Street Address Town/City State ZIP

Tax Map: _____ Lot(s): _____ Zoning District: _____

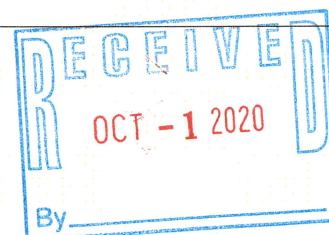
Section 2. Decision of the Administrative Official to be reviewed

Relating to the interpretation and enforcement of the provisions of the zoning ordinance.

Decision of the enforcement officer to be reviewed _____

Please refer to Appeal document filed with
Town of Stratham, as included in this packet.

Number _____ Article _____ Section XI, 11.5 SPECIAL PROVISIONS of the Stratham Zoning Ordinance in
question: _____



Section 3. Applicant's Certification

I declare under penalty of perjury that all of the submitted information is true and valid to the best of my knowledge. I understand that my misrepresentations of submitted data may invalidate any approval of this application. I further authorize the Members of the Board and/or their staff to enter onto my property for the purposes of this review.



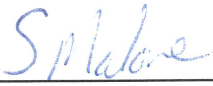
Signature of Applicant

Philip Malone

Print Applicant's Name

10/17/2020

Date



Signature of Owner

Stephanie MALONE

Print Owner's Name

10/17/2020

Date

NOTES:

1. Application must be signed by the owner of the property or other person having the legal right to apply as an agent of the owner. If signed by a person other than the owner of the property documentation of the legal right to apply as an agent of the owner must be supplied at the time the application submittal.
2. If applicant is renting/leasing subject property/structures, said applicant must have a signed letter from the owner stating their permission to conducting proposed business project on their property. This letter must include the property owner's name, current address, and telephone number.

Section 4. APPLICATION CHECKLIST

Completed and signed application (check to ensure the proper section is filled out).

- ☐ Submit application, a plat or drawing, which should provide information in support of the appeal, and supporting documents (9 sets)
- ☐ Completed abutters list with two (2) sets of address labels
- ☐ Fees: \$250 plus \$5 for each abutter
- ☐ Check for the appropriate amount made out to the Town of Stratham.

THE STATE OF NEW HAMPSHIRE

TOWN OF STRATHAM

Philip & Stephanie Malone

72 River Road
Stratham, NH 03885

v.

Town of Stratham Planning Board

10 Bunker Hill Avenue
Stratham, NH 03885

APPEAL TO ZONING BOARD FROM PLANNING BOARD DECISION

NOW COME the above-named Petitioners, by and through their attorneys, Coughlin, Rainboth, Murphy & Lown, PA, and petitions the Zoning Board to review the September 2, 2020 decision of the Stratham Planning Board ("Planning Board" or "Board") pursuant to RSA 676:5 granting approval of the subdivision application and in support thereof state as follows:

INTRODUCTION/ NATURE OF THE ACTION

This matter pertains to the approval of the Stratham Planning Board, relating to an application submitted by Robert & Stephanie Cleary (Applicants) to create the new building Lot at 7 Boat Club Drive.

The Petitioners are residential abutters to the subject site, who reside within fifty (50) feet of the proposed location of the new home.

THE PARTIES

. Petitioners, Philip and Stephanie Malone own property and reside at 72 River Road, Stratham, NH 03885.

. The Town of is a duly organized municipal corporation, having a principal place of business at 10 Bunker Hill Avenue, Stratham, NH 03885.

. This Petition seeks review of the Planning Board's September 2, 2020 approval as there was a minor issue of zoning referenced in the decision.

. Philip & Stephanie Malone, who reside at 72 River Road, Stratham, NH 03885 are seeking to appeal as a direct abutter to Robert & Stephanie Clearly, homeowners of 7 Boat Club Drive, Stratham, NH 03885.

. The applicant for the proposed subdivision has defined this proposal as follows:

Cleary Subdivision. Minor Subdivision Application to create one (1) new building lot at 7 Boat Club Drive, Tax Map 8, Lot 39, owned by Robert and Stephanie Cleary. Application submitted by Justin L. Pasay, Esq, Donahue, Tucker and Ciandella, 111 Maplewood Ave., Suite D, Portsmouth, NH 03801

. The Clearys requested relief to sub-divide their existing lot into two parcels, with the intent to build a house on one of the new lots.

. The Clearys applied for a sub-division approval.

. The sub-division proposal was granted approval by the Town of Stratham Planning Board on September 2, 2020, where all four waivers requested were approved.

One of the waivers related to minimum lot size. The Stratham Subdivision Regulations, Section 4.3.1(b)(i), is as follows:

4.3.1 Minimum Lot Sizes:

In the absence of municipal water or sewerage facilities, minimum lot sizes within all subdivisions shall, in addition to meeting the requirements of the Zoning Ordinance for the district wherein the subdivision is proposed, also meet the lot size requirements specified in Section 4.3.4, "Table of Minimum Lot Size by Soil Classification." This requirement is subject to the following qualifications:

- a. Where more than one soil type is found on a lot, a soil carrying capacity of those soils occurring on the lot shall be used to determine the minimum lot size. (Rev. 8/99)
- b. Wetlands may be used as part of the computed lot size according to the following:
 - i. Areas designated as poorly drained soils (type B hydric) may be utilized to fulfill the Town's minimum lot size requirement provided that a contiguous non-wetland area of at least 30,000 square feet is provided for each building lot. This contiguous non-wetland area must be sufficient in size and configuration to adequately accommodate all housing and required utilities such as sewage disposal, water supply, and all applicable setbacks. (Rev. 11/93)

The proposed subdivision created two (2) Lots (7A & 7B as shown on the Plans). The Applicant proposed to construct a home on a section of Lot 7B as noted as "proposed single family home."

On March 5, 2020, the Town Planner and Code Enforcement Officer made an administrative decision that no variance relief from the Town Zoning Ordinance was required. See Letter from Attorney Passay dated August 19, 2020. The decision was based on the conclusion that the regulation in question appears in both the Zoning Ordinance and the Subdivision Regulations and the Planning Board has the authority to waive Subdivision Regulations pursuant to Section 5.1 of same.

The Petitioners did not learn of this Administrative Decision until September

1, 2020 and therefore could not have filed an appeal pursuant to Section 17.8 of the Zoning Ordinance.

The Zoning Ordinance provides as follows:

11.5 SPECIAL PROVISIONS 11.5.1 Areas designated as poorly drained soils may be utilized to fulfill the minimum lot size required by Town ordinances, and subdivision regulations provided that a contiguous nonwetland area of 30,000 square feet is provided for each lot. This contiguous non-wetland area must be sufficient in size and configuration to adequately accommodate all housing and required utilities such as sewage disposal, water supply, and all applicable setbacks. 11.5.2 No very poorly drained soils or bodies of water may be used to satisfy minimum lot size. 11.5.3 The following buffer provisions shall apply: (Rev. 3/88) a. No subsurface wastewater disposal system shall be constructed within 75 feet of any very poorly drained soil or 50 feet of any poorly drained soils. b. All construction, forestry, and agriculture activities within 100 feet of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands. The Planning Board may require an erosion control plan approved by the Rockingham County Conservation District for any project undertaken up-grade of a wetland. No building activity (Exception: "Building Activity" does not include septic systems, uncovered decks, or similar appurtenant structures, constructed consistent with 11.3.2 (b))) shall be permitted within 100 feet of any very poorly drained soil and within 50 feet of any wetland except as provided in subsection c of this section. Where required, permits from the New Hampshire Department of Environmental Services shall be obtained. (Rev. 3/20) c. Where an existing building within the buffer zone is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within two years of the event causing destruction. The new or rebuilt structure shall not extend further into the wetland or buffer area than the original foundation. d. There shall be a "no-disturbance" buffer zone within twenty-five (25) feet of any wetland and fifty (50) feet of very poorly drained soils. This area will remain in its natural state and will not be subject to grading, excavation, filling or any other activity associated with the development of land. No portion of this "no-disturbance" buffer zone shall be included in determining compliance with Section 11.4.1 (a), above. Town of Stratham Zoning Ordinance Amended March 2020 137 SECTION XII: SHORELAND PROTE

The decision of the Code Enforcement Officer as to whether zoning relief

was required was erroneous. The standard for obtaining a variance is very different from obtaining a waiver from the subdivision regulations.

There was no basis for the town official to determine that the Planning Board alone had the power to address the issue of minimum lot size.

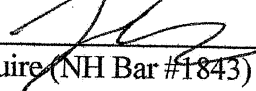
It is unfair to the abutters that this decision was made without notice and without the ability to file an appeal.

CONCLUSION

The Applicant should have been required to obtain a variance and the decision of the Board was in error.

Respectfully submitted,
Philip & Stephanie Malone
By Their Attorneys,
Coughlin, Rainboth, Murphy & Lown, PA

Dated: October 1, 2020

By: /s/ Kenneth D. Murphy 
Kenneth D. Murphy, Esquire (NH Bar #1843)
439 Middle Street
Portsmouth, NH 03801
(603) 431-1993 / fax: (603) 431-8333
e-mail: kmurphy@nhtrialattorneys.com

Reference

Page 3 of the appeal document filed includes a reference to “see letter from Attorney Passay dated August 19,2020”.

The following is a reference to this document, along with a print out of the specific question from the abutters and the response from Attorney Passay. Page 6 of the original document is what is printed on the next page for the convenience of the Planning Board members.



**Stratham Planning Board
AGENDA
September 02, 2020
Stratham Municipal Center
Meeting Room A
Time: 7:00 PM**

The public may access this meeting at the date and time above using this conference call information. Please dial **1-800-764-1559** and input **4438** when prompted for a user pin/code. Please follow the Chair's instructions delivered at the meeting in order to register comments during the public meeting.

If at any time during the meeting you have difficulty hearing the proceedings, please call 603-772-7391 ext. 147

- 1. Call to Order/Roll Call**
- 2. Review/Approval of Meeting Minutes**

- a. August 19, 2020**

Link:

https://www.strathamnh.gov/sites/g/files/vyhli5051/f/uploads/2020.08.19_draft_minutes.pdf

Public Hearing(s):

- b. Cleary Subdivision.** Minor Subdivision Application to create one (1) new building lot at 7 Boat Club Drive, Tax Map 8, Lot 39, owned by Robert and Stephanie Cleary. Application submitted by Justin L. Pasay, Esq, Donahue, Tucker and Ciandella, 111 Maplewood Ave., Suite D, Portsmouth, NH 03801

Link: https://www.strathamnh.gov/sites/g/files/vyhli5051/f/uploads/2020.08.05_sd_app.pdf

Revised Materials:

https://www.strathamnh.gov/sites/g/files/vyhli5051/f/uploads/2020.08.19_applicationamendments.pdf

Comments: https://www.strathamnh.gov/sites/g/files/vyhli5051/f/uploads/publiccomment_upload.pdf

Clearys anticipate that no State or local wetland relief will be required. *See* Enclosure 1.

- “The town requires ‘a contiguous non-wetland area of at least 30,000 sq ft.’ . . . Why should a variance be granted when only 70 percent of the requirement can be met in this sensitive wetlands area?”
 - o **Response:** No variance is being sought. Rather, a waiver is being sought from Section 4.3.1(b)(i) of the Subdivision Regulations. Section 4.3.1(b)(i) states that poorly drained soils may be utilized to fulfill the Town’s minimum lot size requirement provided that a contiguous non-wetland area of at least 30,000 square feet is provided for each building lot. The regulation also states that this contiguous non-wetland area must be sufficient in size and configuration to adequately accommodate all housing and required utilities. As depicted in the plans filed with the Planning Board, Lot 7B has a 62,870 s.f. contiguous area of uplands but, by virtue of the applicable wetland setbacks, that area could not accommodate all housing and required utilities without significant permitting relief being required. However, the distinct 20,121 s.f. area of contiguous uplands on the southern peninsula of the Property is more than adequate to accommodate reasonable development of Lot 7B in a manner that avoids all environmental impact. As a result, the Clearys are requesting a waiver from Section 4.3.1(b)(i) of the Subdivision Regulations, as outlined in great detail in the Clearys’ 15 July 2020 filing. As advanced in that filing, the Clearys submit that their waiver request in this context satisfies the applicable waiver criteria.
- “Has the Stratham Conservation Commission been involved with this proposal?”
 - o **Response:** The Clearys’ understand that the Conservation Commission reviewed their Application and did not object to same as no wetland or buffer impacts are anticipated by the development of Lot 7B and the proposed driveway.
- “Has the Stratham Zoning Board been involved with this proposal? Specifically related to section 11.5 from the Zoning Ordinance rules for ‘very poorly drained soils’?”
 - o **Response:** No. By administrative decision of Tavis Austin, AICP, the Town Planner, and Shanti Wolph, Building Inspector/Code Enforcement Officer, on 5 March 2020, no variance relief from the Town of Stratham’s Zoning Ordinance is required because the regulation in question appears in both the Zoning Ordinance and the Subdivision Regulations, and the Planning Board has the authority to waive Subdivision Regulations pursuant to Section 5.1 of same. This administrative decision is the law of this case as no appeal from same was taken to the Town’s Board of Adjustment within seven (7) days of the underlying administrative decision as required by Section 17.8.1 of the Zoning Ordinance. Further, no very poorly drained soils or bodies of water were used to satisfy minimum lot size for Lot 7B, which far exceeds the minimum lot size requirement of 2 acres.

- Katrina Forest & Robert George
4 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7420 1253

- Michelle Richards, Trustee
Finley Family Revocable Trust
2 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7420 1260

- Gary & Lisa Street
66 River Road
Stratham, NH 03885

7019 2280 0001 7420 1277

- David & Erika Kisver, Trustees
EMK Realty Trust
9 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7420 1284

- Joshua & Stephanie Dobbins
Dobbins Family Revocable Trust
8 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7420 1291

- Robert & Stephanie Cleary
7 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7420 1215

- Thomas & Chelsea Digioseppie
65 River Road
Stratham, NH 03885

7019 2280 0001 7420 1222

- Barbara Flocco, Trustee
Flocco Revocable Trust
69 River Road
Stratham, NH 03885

7019 2280 0001 7420 1239

- Town of Stratham
10 Bunker Hill Avenue
Stratham, NH 03885

Hand delivered

- Philip Malone
72 River Road
Stratham, NH 03885

7019 2280 0001 7420 1246

• Shane Comer & Marinda Crosier
6 Boat Club Drive
Stratham, NH 03885

7019 2280 0001 7424 6872

Squamscott Scullers LTD
PO BOX 526
Exeter , NH 03833

7016 0600 0000 5129 1239

Boston & Main Railroad Corp
1700 Iron Horse Park
Billerica, MA 01862

7016 0600 0000 5129 1246

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Portsmouth, NH 03801

7016 0600 0000 5129 1253

Henry Boyd, P.E.
Millenium Engineering
PO Box 745
Exeter , NH 03833

7016 0600 0000 5129 1260