



Stratham Zoning Board of Adjustment
Meeting Minutes
May 9, 2023
Stratham Municipal Center
Time: 7:00 pm

Members Present: Drew Pierce, Chair
Brent Eastwood, Member
Jameson Paine, Member
Frank MacMillan, Member
Nicolas Garcia, Alternate

Members Absent: Bruno Federico, Member

Staff Present: Mark Connors, Director of Planning and Community Development

1. Call to Order/Roll Call

Mr. Pierce called the meeting to order at 7:00 pm and took roll call. Mr. Pierce appointed Nicolas Garcia as a voting member for this meeting and hearing.

2. Approval of Minutes

Mr. MacMillan made a motion to approve the February 21, 2023 meeting minutes. Mr. Eastwood seconded the motion. All voted in favor and the motion was approved.

3. Public Hearing:

- a. Case #670: Michael Petlick of 49 Union Road, Stratham, NH, Tax Map 10 Lot 81, Zoned Residential/Agricultural.** Request for approval of a special exception and a variance from Section 5.12.2c of the Zoning Ordinance in order to operate a landscaping company as a home occupation at a property the business proprietor no longer maintains his primary residence at.

Mr. Petlick presented his application. He has owned his landscape business since 2001 and operated it out of his former residence at 49 Union Road since 2005. In November 2018 his family moved to another home in Stratham as they outgrew the residence. He continued to operate the business at 49 Union Road. In 2012 Mr. Petlick first applied for a Special Exception Permit to operate the Home Occupation. The ZBA approved the application and Mr. Petlick stated he has operated the business in accordance with the approval. He currently rents out the home at 49 Union Road to a family. Mr. Petlick is at the property daily to maintain the business and coordinate with his tenants. He has only three to five employees at one time.

Mr. Paine asked what equipment is stored on site. Mr. Petlick replied he has an enclosed trailer for mowers; additional mowers and a tractor inside the barn; and a couple of trucks.

Mr. Pierce asked if Mr. Petlick would like to add any additional information to the request. Mr. Petlick declined stating he provided all of the details in the applications.

Mr. Pierce asked Mr. Connors if there have been complaints or is this a matter of procedure. Mr. Connors explained that Home Occupations need to be renewed every 3 years and during the most recent renewal, the Code Enforcement Officer became aware of the change of residence for Mr. Petlick. Mr. Petlick added that in 2019 he was asked by Building staff if he still had the business to which he responded yes. In 2022 the CEO recognized the address discrepancy and questioned where Mr. Petlick resided. Mr. Petlick responded that he moved. He apologized to the Board for not completing his due diligence in understanding the requirements of Home Occupation.

Mr. MacMillan asked Mr. Connors for clarification on the intent of Section 5.12.2.c of the Zoning Ordinance. Mr. Connors replied that he believes that section of the Ordinance allows a tenant to conduct a Home Occupation at a property with approval of the owner of the property.

Mr. Garcia asked if this case is a violation. Mr. Connors responded that this Home Occupation is not permitted under the zoning requirements because the tenant is not operating the Home Occupation. Mr. Pierce added that the Applicant is requesting relief from that requirement in the Ordinance.

Mr. Garcia asked for the rationale behind the 25% maximum area allowed to be occupied by the business and if there are tax implications involved. Mr. Connors responded that the primary reason for the limitation is because in a residential zone there is a desire to limit commercial uses to a small area in order to retain the residential character of the neighborhood.

Mr. Pierce asked if there have been any complaints from neighbors. Mr. Connors replied no. Mr. Pierce asked how long the garage has been there. Mr. Petlick stated the previous owner of the property constructed it.

Mr. Pierce asked if the Board is reviewing the variance first and then the Special Exception. Mr. Connors replied yes. Mr. Pierce reviewed that the variance is to operate a Home Occupation at a property where the business owner no longer maintains his primary residence at. He asked if this situation has happened in town elsewhere. Mr. Connors replied not to his knowledge. Mr. Pierce stated this is a unique situation. Mr. Eastwood agrees and thinks it is a better situation to have the property owner operate the business rather than a tenant.

Mr. MacMillan asked if the business could be relocated to Mr. Petlick's current residence. Mr. Petlick responded no because there is not sufficient space.

Mr. Pierce reviewed the application to determine if it met the required criteria. He asked the Board for comments on Mr. Petlick's written responses to variance criteria. Mr. MacMillan asked with regards to the public interest criteria, if the application is approved does this set a precedent. Mr. Connors replied no, every variance application is different and the circumstances are unique, so approval of this application would not create a precedent for applications of a similar type.

Mr. Pierce asked if there were any comments from abutters. Mr. Connors replied no.

Mr. Pierce asked if there are any members of the public that would like to speak.

Kevin Rowe from 45 Union Road spoke in favor of the existing business. He stated the previous paving company had trucks in and out from 9:00 am to 11:00 pm and were very noisy. Mr. Petlick's crew works from 7:00 am to 7:00 pm and he keeps the land around the house clean. He confirmed that Mr. Petlick is there daily. Mr. Rowe is appreciative that Mr. Petlick is still a Stratham resident and might have a different opinion about the business being there if it was owned by someone from out of town. He added that Mr. Petlick is very responsive to calls from Mr. Rowe if something arises on the property. Mr. Rowe confirmed that the bark mulch stored onsite is temporary.

Mr. Pierce noted that no other members of the public were present and requested a motion to close the public hearing. **Mr. Eastwood made a motion to close the public part of the meeting. Mr. Paine seconded. All voted in favor and the motion was approved.**

Mr. Pierce said the Board would move into deliberations and asked for questions and comments from the Board.

Mr. MacMillan stated that he agrees with Mr. Petlick's response on the public interest criterion. Mr. Paine agrees and added that they have received public input from a neighbor that there is no concern with the use and it is continuing an existing use. Mr. Pierce and Mr. Eastwood indicated that they agreed as well.

Regarding the spirit of the ordinance criterion, Mr. Paine acknowledged it was an unusual circumstance but stated that the owner continues to reside nearby and the property continues to be used as a residence and is not completely converted to a commercial use. It continues to have the same setting as if it was owner-occupied. Mr. Pierce said to the casual observer, you would not notice any changes. Mr. Garcia asked if the spirit is observed because there have been no real practical changes to the property. Board members agreed that the spirit of the spirit of the ordinance is observed. Mr. Pierce believes the purpose of having the owner reside at the property is to ensure that the property is properly maintained and Mr. Petlick has demonstrated that he maintains it. Mr. Petlick added that as a landscaper he does maintain the property and keeps it tidy. Mr. Connors suggested that a condition of approval can be that if the owner of the business moves out of Stratham that he would need to return to the ZBA. Mr. Pierce agrees that a condition of the approval should be that the owner of the business remains a Stratham resident which will meet the spirit of the ordinance. Mr. MacMillan asked what happens if Mr. Petlick sells the property? Mr. Connors replied that usually variances run with the land but in this case a home occupation is a temporary special exception so he recommends that the motion include language that the approval is specific to this business and property owner and that it is not a perpetual variance that will apply to any future home occupation. Mr. Petlick asked for confirmation that as long as he owns the property, the variance would not need to be renewed every three years. Mr. Connors confirmed that is correct but the home occupation special exception would need to be renewed with the Building Department every three years.

Regarding the substantial justice criterion, Mr. Pierce stated that he agrees with Mr. Petlick's statement on the application and added that he believes it would hurt his business if he could not continue to operate as he has in the past. He believes substantial justice would be done by granting the variance.

Mr. Garcia believes the potential harm to the business also satisfies the unnecessary hardship criterion. Mr. Paine said that no testimony had been submitted that this use would result in any diminishment of the surrounding property values. Mr. Pierce believes the proposed use is a

reasonable one as it has existed for many years, there have been no complaints, and there is community support for it.

Mr. Garcia made a motion to approve the variance with the conditions that is pertains to this particular homeowner and that the owner must reside in the Town of Stratham. Mr. Eastwood seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce asked for a discussion on the special exception. Mr. Connors stated that this process will be to approve the home occupation under the new ownership scenario. Mr. Pierce asked if the public is served at the location. Mr. Petlick responded no.

Mr. Connors commented that the home occupation ordinance limits the total number of commercial vehicles to two and asked Mr. Petlick if he can meet that requirement. He has driven by the property and seen a number of non-commercial vehicles and also more than two trucks and asked if that is temporary. Mr. Petlick responded that there are two black trucks that belong to employees. There are two green trucks that are in the process of being repaired in order to sell them. There are three white trucks, two of which are driven to and from work by two employees and also his green truck that he drives to and from the property. Mr. Paine asked if there is a way to formalize the parking so the vehicles are not spread out. Mr. Petlick responded that his employees park near the chain link fence so they are out of the way of the commercial trucks that are loading the mulch and the two green commercial vehicles will be gone soon.

Mr. Pierce noted that the ZBA in 2012 stated the property would not be frequently serviced by commercial trucks, not that there would be no commercial trucks. Mr. Petlick added that he told the ZBA in 2012 that he receives two or three deliveries of mulch at the beginning of the season and when the piles are gone, he picks up mulch directly from the nursery for the remaining customers. It's a cost saving measure to purchase a bulk delivery at \$20 per yard rather than \$43 to \$48 per yard direct from the nursery.

Mr. Eastwood made a motion to open the public portion of the meeting. Mr. Paine seconded the motion. All voted in favor and the motion was approved.

No members of the public spoke.

Mr. Paine made a motion to close the public portion of the meeting. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

Mr. Garcia stated that he finds the special exception meets all of the criteria as outlined in Section 5.12 and made a motion to approve the special exception. Mr. MacMillan seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce noted that there is a 30-day public appeal period and thanked Mr. Petlick for his time.

4. Other Business

a. Annual ZBA Election of Officers

Mr. Pierce made a motion to elect Mr. Eastwood as Vice-Chair. Mr. Paine seconded. All voted in favor and the motion was approved.

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193 **Mr. Eastwood made a motion to elect Mr. Pierce as Chair. Mr. Garcia seconded. All voted**
194 **in favor and the motion was approved.**

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196 b. Staff update

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198 Mr. Pierce congratulated Mr. Connors on his promotion to Director of Planning and Community
199 Development.

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201 c. Revised ZBA schedule for remainder of 2023

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203 Mr. Connors presented a revised meeting schedule for the remainder of 2023. The schedule
204 reduces the time between receipt of an application to the date of a meeting from 45 days to 28
205 days. The office has received some complaints from applicants on the length of time they must
206 wait for a meeting and Mr. Connors said he believes 28 days is sufficient for staff to process the
207 applications and address any issues which may come up.

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209 Mr. Pierce asked why Mr. Marchese chose a 45 day schedule. Mr. Connors said he presumes
210 that it is because 45 days is the maximum allowed by statute.

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212 Mr. Pierce asked if 28 days is enough time for office staff. Mr. Connors believes it is and added
213 that the biggest issue is incomplete applications and if an application is incomplete, we do not
214 need to include it on an agenda.

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216 **Mr. Pierce made a motion to accept the 28 day Zoning Board of Adjustment 2023 schedule**
217 **for regular board meetings as drafted. Mr. Eastwood seconded. All voted in favor and the**
218 **motion was approved.**

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220 **5. Adjournment**

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222 **Mr. Eastwood made a motion to adjourn the meeting at 7:49 pm. Mr. Garcia seconded. All**
223 **voted in favor and the meeting was adjourned.**