



**Stratham Zoning Board of Adjustment
Meeting Minutes
August 8, 2023
Stratham Municipal Center
Time: 7:00 pm**

Members Present: Drew Pierce, Chair
Brent Eastwood, Vice Chair
Frank MacMillan, Member
Nicholas Garcia, Alternate

Members Absent: Bruno Federico, Member
Jameson Paine, 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 7:08 pm and took roll call. Mr. Pierce appointed Mr. Garcia as a voting member for this meeting.

2. Approval of Minutes

a. June 13, 2023

Mr. MacMillan requested an edit on page 5, line 194 to correct the spelling of his last name.

Mr. Pierce made a motion to table the approval of the June 13, 2023 meeting minutes as amended. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

b. June 27, 2023

Mr. Eastwood requested a correction to line 42 that he did not second the motion to adjourn. The minutes were corrected to reflect Mr. MacMillan seconded the motion. Mr. Garcia requested a correction to the spelling of his first name on line 13 and also on the June 13th minutes on line 12.

Mr. Pierce made a motion approve the June 27, 2023 meeting minutes as amended. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

3. Public Hearing – New Business:

- a. Case #668: Robert Marshall of 85 College Road, Stratham, NH, Tax Map 20 Lot 7, Zoned Residential/Agricultural.** Request for approval of a variance from Section 12.6.1, Shoreland Protection District, to expand an existing residence 115-feet from the Squamscott River shoreline

where a setback of 150-feet is required and a special exception under Section 5.1.3 to expand a non-conforming structure.

Mr. Pierce gave the option to the Applicant to present the case to a four member board or continue the hearing to the next meeting. Derek Durbin, attorney for the Applicant, explained to Robert Marshall that three positive votes are required to pass a variance and with only four members present the Board is giving the Applicant the option to wait, continue, or move forward with the case. The Board and the Applicant opted to take a five minute recess so that Mr. Connors could contact Mr. Federico to inquire when he can arrive. Mr. Connors returned and stated that he was not able to speak with Mr. Federico. Mr. Durbin suggested that the case proceed with four members.

Mr. Pierce noted that this case was tabled from the June 27, 2023 meeting at the request of the Applicant and requested the Applicant to present their case.

Mr. Durbin spoke on behalf of the Applicant. The property is located in the Residential/Agricultural Zoning District as well as the Shoreland Overlay District and Wetlands Conservation District. The property is just over 3 acres in size and has a relatively modest single family home built in 1720. The property is unique in a number of respects including having over 500 feet of frontage along Route 108 and two NHDOT approved curb cuts. The existing driveway and parking area is located at the south end. The curb cut at the north end of the property with a driveway apron is not currently used. The entire property is located in the regulated Shoreland buffer which is the most unique condition as all improvements to the property require relief from the ZBA and possibly the Planning Board as well. The property is bounded on the north by the Squamscott River and to the west by Mill Brook. The property is bound on three sides by tidal water and wetlands. The project is to construct a 24-foot by 48-foot garage that will be attached to the house with a breezeway. The garage would be accessed by a new pervious driveway that would be accessed by the northern curb cut which would become the primary access. The house is currently accessed by a brick walkway that is about 100 feet long which is difficult access in the winter. The property also lacks storage for outdoor equipment and vehicles. The Applicant is seeking safer, more convenient access to the house along with storage space. The Applicant is also a hobbyist gardener and is looking for space for his non-commercial plant nursery. There is no intention to convert the garage into living space. There are no other feasible locations for the garage given the topography. The area to the west of the house has a significant grade to the river and the septic system is located to the northwest side. The Applicant is removing a pool and impervious patio to compensate for the addition which will result in a net reduction of impervious surface of approximately 150 square feet. In addition to needing relief from this Board, the project requires a Conditional Use Permit from the Planning Board for impacts in the wetlands buffer. The Stratham Conservation Commission reviewed the project and determined it is not inconsistent with the Commission's mission and natural resource protection goals. The Commission recommended that any disturbed soils not constructed upon be subsequently replanted. The Applicant agrees with the Commission's recommendations. The NHDES Shoreland Permit has been issued.

Mr. MacMillan asked if the structure is three stories. Mr. Marshall replied that it is the same height as the existing structure and the rendering makes it appear as three stories due to the grade change but it is only two stories. Mr. MacMillan asked if there is an elevator to access the first floor of the house. Mr. Marshall replied that is a feature he is researching to assist his elderly father.

Mr. Eastwood asked how close the new driveway is to the bridge and if there is a breakdown lane

94 in the road. Mr. Durbin replied there is a breakdown lane on the bridge. Other Board members
95 replied there is an NHDOT approved curb cut. Mr. Eastwood asked if the appropriate driveway
96 permit applications have been filed. Mr. Durbin replied that the permit for the driveway exists. The
97 pervious part of the driveway is not part of the NHDOT application. NHDOT basically reviews
98 the sight line for the driveway. The pervious driveway proposal is to create the least amount of
99 impervious surface due to its presence in the Shoreland Zone buffer to reduce impacts.

100
101 Mr. Durbin addressed each of the variance criteria. Granting the variance will not be contrary to
102 the public interest and will serve the spirit of the Ordinance. The garage will be set back 115 feet
103 from the Squamscott River and there will be no grading changes made to the property. The removal
104 of the impervious patio and pool will result in a net reduction of almost 150 square feet of
105 impervious surfaces. The area between the proposed garage and the river is densely vegetated with
106 native species which significantly reduces stormwater runoff to the river. An NHDES Shoreland
107 permit has been approved. The scale and design of the structure is consistent with the other
108 surrounding buildings so it will not alter the essential character of the neighborhood. The new
109 driveway curb cut has been approved by NHDOT demonstrating there is not public safety hazard
110 identified with it. Mr. Durbin submits to the Board there is no threat to public health, safety, or
111 welfare associated with granting the variance. Substantial justice will be done as there will be no
112 imposition on municipal services. There is a benefit to the public with the reduction of impervious
113 surface. There is a loss to the Applicant associated with how encumbered this property is from a
114 regulatory perspective. Surrounding property values will not be diminished as the structure will
115 have a consistent look, scale, and design with surrounding structures and will blend in well to the
116 extent it can be seen by passing traffic. There are no abutting residential structures that will be
117 impacted as the area is bounded by water and vegetation. Literal enforcement of the Ordinance
118 would result in an unnecessary hardship due to the special conditions on the property and the heavy
119 regulatory encumbrance. The reduction in impervious surface coverage mitigates any impact to
120 the Shoreland buffer and the Stratham Conservation Commission appears to agree with that.
121 Owing to the special conditions of the property there is no fair and substantial relationship between
122 the general purpose of the ordinance and its application. The proposed use is reasonable to make
123 a reasonable accommodation for the owner and his elderly father.

124
125 Regarding the Special Exception request Mr. Durbin offered the following. Section 5.1.3 of the
126 ordinance is broad enough to include this project but it appears that the intent of the section when
127 it was adopted was for building setbacks to property lines as opposed to setbacks to buffers by the
128 way that the criteria reads. The project meets the expansion criteria in that the existing pool house
129 has a setback of 51 feet, the residence has a setback of 50 feet, the patio and the pool is closer to
130 the buffer zone and the proposed structure will not encroach any further into the setbacks. The
131 expansion will not have any further adverse impact on the view, light, and air of any abutter as the
132 garage will be located on the northern side of the house which is abutted by the Squamscott River
133 and land owned by the State and therefore there are no residential abutters to be impacted. The
134 expansion will not cause property values to deteriorate as previously discussed in the variance
135 criteria. The expansion will not impede existing rights of access or egress and will create more
136 convenient and safer access to the house. The portion of the expansion that intrudes into the setback
137 does not exceed the footprint square footage of the current intrusion and will reduce the current
138 impact by 150 square feet. The use of the non-conforming structure is not commercial. And finally,
139 the expansion is within the side setback and is not a request to violate a height restriction.

140
141 Mr. MacMillan asked Mr. Connors if the pool was approved through the Zoning Board of
142 Adjustment in the past. Mr. Connors asked Mr. Marshall when the pool was constructed and

speculates that it pre-exists the ordinance. Mr. Marshall replied it was constructed in the early 1960s.

Mr. Eastwood asked the origin of the 150-foot setback. Mr. Connors replied it is only for the Squamscott River and is the largest setback the Town has. Mr. Eastwood asked how it compares to other communities. Mr. Durbin replied that in Portsmouth the setback is 100 feet and he generally sees setbacks of 50 to 100 feet and that Stratham is the most restrictive he has seen. But on the contrary Stratham has a 75-foot natural buffer zone where other towns have a 100-foot natural buffer.

Mr. Garcia commented that the Conservation Commission did not seem to be overly passionate about maintaining the 150-foot setback.

Mr. MacMillan asked if the Board should consider that a future owner might want to convert the garage to living space. Mr. Eastwood replied that he does not feel that one case sets a precedent. Mr. Pierce added that he believes a future owner would be allowed to pursue that and he does not view it as an increased possible impact. Mr. Durbin stated that the entire property is entirely within the 150-foot setback and if the proposal was for an ADU vs. a garage, the owner would still need relief.

Mr. Pierce made a motion to open the public hearing. Mr. MacMillan seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce made a motion to close the public hearing. Mr. Eastwood seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce opened up the Board deliberation by bringing attention to the Conservation Commission's support of the project. Board members agreed.

Mr. MacMillan made a motion that the Zoning Board approve the special exception application, submitted by Robert Marshall, from 5.1.3 of the Zoning Ordinance to allow the expansion of a non-conforming structure at 85 College Road, Tax Map 20 Lot 7, Zoned Residential/Agricultural, as the Zoning Board has determined the application meets all of the special exception criteria per the Board's deliberations as presented on the plan prepared by Atlantic Survey Company LLC dated April 2023. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

Mr. MacMillan made a motion that the Zoning Board approve the variance application; and the plan submitted by Atlantic Survey Company LLC dated April 2023; submitted by Robert Marshall, from Section 12.6.1, Shoreland Protection District, of the Zoning Ordinance to allow the construction of a residential addition at 85 College Road that is 115-feet from the Squamscott River shoreline where a minimum setback of 150-feet is required, as the Zoning Board has determined the application meets all of the variance criteria per the Board's deliberations, subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall install erosion control measures to reduce construction-related impacts to the Squamscott River and associated tidal wetlands. The Town Planner shall inspect erosion control measures and determine they are adequate.**
- 2. The final plan shall be stamped by the Certified Wetland Scientist.**

192 **3. Vegetation within 75-feet of the Squamscott River and associated wetlands shall**
193 **remain undisturbed.**

194 **4. If not exercised within two years of the date of approval, this variance will expire on**
195 **August 8, 2025.**

196 **Mr. Garcia seconded the motion. All voted in favor and the motion was approved.**

- 197
198 **b. Case #672: Jeremy Baxter of 10 Scamman Road, Stratham, NH, Tax Map 18 Lot 57, Zoned**
199 **Residential/Agricultural.** Request for approval of a variance from Table 4.2 of the Zoning
200 Ordinance to construct a detached garage and workshop 12-feet from the side property boundary
201 where a minimum setback of 20-feet is required.
202

203 Mr. Pierce explained the meeting process to the Applicant.
204

205 **Mr. Pierce made a motion to open the public hearing. Mr. Eastwood seconded the motion.**
206 **All voted in favor and the motion was approved.**
207

208 Jeremy Baxter presented his project. He is looking to build a detached L-shaped garage 26 feet by
209 44 feet overall dimensions. The existing home is approximately 40 feet from the side property line
210 and therefore there is not sufficient space to construct the garage next to the home, so he proposes
211 to construct it farther into the rear of the property. Mr. Baxter presented his responses to the
212 variance criteria. The variance will not be contrary to the public interest because the abutter on that
213 side of the property does not object to its construction as long as the existing bushes remain. The
214 spirit of the ordinance is observed because the majority of homes in the neighborhood have a
215 garage. Other than Mr. Baxter only about one or two homes do not have a garage. Substantial
216 justice is complete because there is no other location on the property to construct a garage. The
217 driveway is currently centered on the setback, there is no entrance into the home on the opposite
218 side of the lot, and they would need to add drainage and a culvert to relocate the driveway. The
219 drinking water well also precludes the garage from being constructed farther into the back yard.
220 The back wall of the garage will be approximately five feet from the well. The values of
221 surrounding properties will not be diminished because the garage should and will improve the
222 Applicant's property value and in turn improve the overall property values of the surrounding
223 properties.
224

225 An unnecessary hardship would exist if the variance is not allowed as this property would not be
226 afforded the luxury of a garage that other neighbors have. The property currently has no storage
227 for vehicles and other equipment in the winter.
228

229 Mr. MacMillan asked Mr. Connors if there are other neighborhoods where the setback is less than
230 20 feet. Mr. Connors replied that cluster subdivisions with smaller lots have smaller setbacks. Mr.
231 MacMillan asked for confirmation that Mr. Baxter proposes construction within 12 feet. Mr.
232 Baxter confirmed and added that there is a 2-acre minimum lot size in Stratham, but his lot is only
233 1.19 acres as it pre-dates that requirement and meeting the larger setback is difficult.
234

235 Mr. Pierce asked if the drawing is to scale. Mr. Baxter replied yes. Mr. Pierce asked if the garage
236 is bigger than the house. Mr. Baxter replied that he believes the house is 26 feet by 42 feet so the
237 garage is slightly larger than the home. The roof peaks should be similar in height but the garage
238 roof might be a couple of feet higher than the house.
239

240 Mr. Pierce asked if there is a minimum setback required between the garage and the home as the

plan depicts a 4-foot separation. Mr. Connors replied he is not sure and that will be reviewed during the building permit process. Mr. Baxter asked if the requirement is related to the fire code because he has done work in other towns where Hardie Board is considered a fire retardant siding. Mr. Connors believes the setback is related to fire code.

Mr. Eastwood asked what is the distance between the well and proposed garage. Mr. Baxter replied about four to six feet.

Mr. Pierce asked if the septic is in the front yard. Mr. Baxter replied yes.

There were no other questions from the Board.

Mr. Pierce asked for comments from the public.

Kelly Doucette from 7 Scamman Road announced that she asked her questions to Mr. Baxter earlier in the evening. Ms. Doucette asked what happens if the project changes after the meeting. Mr. Pierce replied that the variance is specific to the setback. Mr. Connors added that the Applicant can move the location slightly, but not closer to the property line and he cannot increase the size or height of the building. Mr. Pierce asked if there needs to be a condition of the approval that the building stays as presented on the plans as the Board is only reviewing the encroachment into the setback; that feasibly the Applicant could apply for a building permit for a larger structure that encroaches into the setback to the same degree. Mr. Connors replied that the approval can be tied to the plans submitted. Mr. Pierce asked if the plans submitted are tied to the approval, then changes beyond that would have to come back to the Board. Mr. Connors confirmed.

Mr. Connors asked Mr. Baxter if the line of plantings that separates the property lines will be retained. Mr. Baxter replied yes. Mr. Eastwood suggested that be a condition of approval.

Mr. MacMillan made a motion to close the public hearing. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

Mr. Pierce asked for Board deliberation.

Mr. Eastwood believes the buffer of the plantings is key. He guessed that the height is about six to ten feet. Mr. Baxter replied he trims them to about six to seven feet and they grow to about 11 feet.

Mr. Pierce discussed the conditions if approved. He asked if there should be a specific limitation on the height of the structure or should the Board reference the plan in the approval. Mr. Connors believes they can just reference the plan in the approval. Mr. Pierce is concerned with the vegetation buffer and future maintenance or replacement. Board members agree and discussed a proposed condition.

Mr. Pierce made a motion to approve the variance with the condition that it is tied to the plan submitted to the Zoning Board stamped June 15, 2023 and that there remains in place a reasonable vegetation buffer on the affected side of the property. Mr. Garcia seconded the motion. All voted in favor and the motion was approved.

4. Other Business:

Potential amendments to the Board of Adjustment Rules of Procedure.

Mr. Connors provided to the Board some proposed edits to the Board's Rules of Procedure. The Rules of Procedure cannot be changed until the changes have been reviewed at two meetings. Tonight is the first discussion. Changes include clarification on the election of officers; removing the Secretary position as Town staff provide that function; offering to Applicant's the option to postpone public hearings if a full board is not present; correcting the Order of Business; voting on the meeting schedule; coordination with the Conservation Commission; extending the application deadline to 28 days from 21 days in advance of a meeting; adding abutter notification by regular first class mail in addition to certified mail; clarifying and simplifying the public hearing process; adding the 60-day availability of meeting audio recordings. The Board was in agreement with the changes.

Mr. Pierce made a motion to place this discussion on the agenda for the next regularly scheduled meeting. Mr. Garcia seconded the motion. All voted in favor and the meeting was adjourned.

5. Adjournment

Mr. Eastwood made a motion to adjourn the meeting at 8:27 pm. Mr. Garcia seconded the motion. All voted in favor and the meeting was adjourned.