



**Stratham Zoning Board of Adjustment
Meeting Minutes
February 12, 2019
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Phil Caparso, Full Time Member
Bruno Federico, Full Time Member
Deidre Lawrence, Full Time Member
Tana Ream, Alternate

Members Absent: Amber Dagata, Alternate

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1) Call to Order/Roll Call

Chairman took roll call. Mr. Dolan asked Ms. Ream if she would be a voting member for this evening. Ms. Ream agreed.

2) Approval of Minutes

a. November 13, 2018

Mr. Caparso made a motion to accept the November 13, 2018 meeting minutes as presented. Ms. Lawrence seconded the motion. Motion carried unanimously.

3) Public Hearing

- a. **Case #642, Dorothy Thompson, 217 Portsmouth Ave, Map 21 Lot 88, Residential Agricultural Zoning District.** Represented by Eric A. Maher, Esq., and Bruce Scamman of Emanuel Engineering Inc. The applicant requests a Special Exception per Article 3.6 (B)(1), Section III of the Stratham Zoning Ordinance to permit the applicant to construct 5, 1-bedroom cottages for use as a cottage colony.

Eric Maher, representing the applicant, explained the proposal is to allow for five (5), 320 SF, cottages on the applicants property. Attorney Maher explained the site plan and the location of the cottages to the board. Attorney Maher stated the applicant has been before the Planning Board for Site Plan approval on February 6, 2019 and a conditional approval was received. The

only change the Planning Board requested is to relocate one (1) cottages to the center/north westerly region of the property. Attorney Maher stated the lot is 3.14 acres located on Portsmouth Avenue with good lines of site with access to the property from a gravel driveway located on the easterly portion of Portsmouth Avenue. The access to the property will be one-way around the property to exit. Attorney Maher explained each cottage will be serviced by on-site well and septic with no use of municipal resources. Attorney Maher explained the applicant is requesting a maximum length of stay to be 30 days, due to Stratham Zoning "transient stay", and not the 89 days, which is the maximum allowed under NH state law prior to the establishment of the landlord/tenant relationship. Attorney Maher explained at no time will the cottages be used as permanent residential structures, it is only for transient use. Attorney Maher stated the "use" will be related to a permitted agritourism use for families to stay on the property to partake and experience life on a working farm. The applicant suffered some health issues in 2017 and has decided to refocus on her life and enjoy the benefits associated with farming. The applicant has done some research and spoke with others who voiced interest in this concept and where the idea came from and the invite families for a unique family experience on a working farm. The applicant currently is raising goats and producing goat related products (goat milk, lotion, soap, etc.).

Attorney Maher explained there will be no hazard to the public or adjacent properties due to potential fire, explosion, or release of toxic materials. The cottages will be serviced by a DES approved septic system which will be of sufficient capacity to handle any issues with this use. The abutting properties are located relatively far away from the cottages which will not cause a detriment to property values with a thick vegetative buffer running along Portsmouth Avenue and that screening will remain intact. The cottages will be placed along the down slope of the property and will be shielded from view from the public right of way. Attorney Maher stated the setbacks to the potential wetlands of the abutting property have been applied and the residence is located on the far side of that lot. Attorney Maher explained there is a 7 acre parcel at the rear of lot which has a thick blueberry patch on the backside with a residence that is located off of Squamscott Road on the far side of the lot. The last abutting property has a residence and a landscaping business and no potential impacts of noise or other noxious uses will affect this residence. The applicant and her husband, Eric, reside in the residence on the site and being on the site will assure there is no excessive noise and the cottages will be used in a respectful manner. Attorney Maher explained there will be a limitation of the number of cars on site due to the type of use requested and no potential adverse impact of traffic safety or congestion is foreseen. There will be no impact on municipal services and there is a sufficient gravel driveway for an ambulance to access the cottages in case of an emergency. Attorney Maher stated there is no anticipated increase in storm water runoff onto adjacent properties or streets, the limited amount of storm water runoff from the roofs will be naturally infiltrated into the soils.

Mr. Caparso asked counsel if he was aware that the applicant has been before the board in the last 24 months. Attorney Maher stated yes. Mr. Caparso asked if counsel was aware that in that hearing the board approved the special exception for a promise of non-expansion. Attorney Maher stated no. Attorney Maher stated there is no anticipated expansion of the gift shop and will remain a separate use related solely to the agricultural activities taking part on the property. Attorney Maher explained to Mr. Caparso and the board that the special exception before the board is not an expansion of the gift shop business and is related to the goat raising activities on site. Mr. Caparso questioned if there is agricultural activity currently on site. Attorney Maher stated yes, the applicant raises goats on site currently. Mr. Caparso asked how many goats. Dorothy Thompson, applicant, stated there are currently five (5) goats and one (1) is pregnant with three (3) babies. Mr. Caparso asked if the applicant was approved that their primary income would not be from agriculture but from the cottage business. Mr. Caparso asked if the applicant

is currently selling goat related products. Attorney Maher stated yes, products are currently produced and sold. Mr. Wolph explained to the board this application is not for agritourism and is for Section 3.6(B)(1) of the Table of Uses in the Zoning Ordinance. Mr. Dolan stated he understands the board made it clear at the last hearing that granting a variance for the last application would be the last expansion of the property. Mr. Wolph explained that directly relates to a non-expansion of that specific Home Occupation which was granted and it was not noted that the land, in perpetuity, would be limited to that one business. Mr. Wolph stated the board did not put restrictions on expanding the existing property, it would only relate to the business itself. Ms. Lawrence asked for clarification that the application request is for agritourism. Attorney Maher stated it was just to provide context as the overall use, since agritourism is allowed under the zoning ordinance as a matter of right. Ms. Lawrence stated the RSA has a specific requirement, "raising and sale of...", and questioned if goats are being sold. Attorney Maher stated there is raising and there is sale and there is an established agricultural use on this property. Mr. Wolph reiterated the board's duty is to hear the application before them regarding Section 3.6(B)(1) and not for agritourism. Mr. Wolph explained the cottage colony is proposed as five (5) individual cottages and Stratham has a special exception for "overnight and day camps, cottage colonies, vacation resorts, and similar recreational facilities" which does not have a definition for those items. Mr. Wolph wrote a definition from Webster's Dictionary in the staff review which includes the definition of a "cottage" and "colony". Mr. Wolph explained to the board since these uses are noted in the zoning ordinance it is the board's duty to accept the applications and vote on whether they meet the criteria of the special exception. Mr. Dolan stated the board would be writing policy for the town by defining a "cottage" and a "colony". Mr. Wolph agreed and stated as long as it meets the criteria the RSA does not allow the board to deny the special exception. Ms. Lawrence asked for clarification on how the board determines a "cottage colony" versus a "hotel, motel, and hostels" or "bed and breakfast inns". Attorney Maher explained there is a distinction without a difference. The various uses under 3.6(B), Table of Uses, the item most similar to this application is item (B)(1) which would fall under the similar "recreational facilities". Attorney Maher explained this proposed use is not a "motel, hotel, or bed and breakfast" as no meals will be prepared on site and served by the applicant. The structures are stand alone with independent heating system, bathroom, kitchenette, and sleeping quarters which will be occupied by one individual, the units will not be connected. Mr. Caparso asked for clarification on the difference between this and a motel room. Attorney Maher explained a motel does not usually have kitchenettes and separate facilities. Ms. Lawrence read 2.1.46 definition of a motel/hotel. Attorney Maher stated the cottages are not a "building" of 9 or more sleeping units in one area. Mr. Wolph stated the application came in specifically for Table 3.6(B)(1) based on the definitions which were researched and accepted the application as complete and accurate in the distinction of the specific temporary residential use. Attorney Maher stated Mr. Wolph, absent a specific definition, did what a court of law would do to interpret the zoning ordinance by looking at a dictionary for a definition. Ms. Lawrence questioned how many persons can be accommodated in each cottage. Attorney Maher stated there are two (2) beds and a pull-out couch in each cottage which would most likely limit the number four (4). Ms. Lawrence questioned if there is a fire limit. Mr. Wolph stated there is a specific amount of square foot allowed per person, per adult, and half of that per child. Mr. Wolph stated the ZBA can set conditions as part of the approval. The buildings will be built and operated within state and local codes so if there is a limit on occupancy within the building the applicant will be required to adhere to that. Ms. Ream questioned if there are 4 people per cottage, or an extra 20 people, on the property, how does that pertain to septic guidelines and acreage. Mr. Wolph explained that is lot loading and a soil scientist would determine whether the lot is capable of supporting the number of bedrooms on the property. Attorney Maher explained the applicant is required to install a NH DES septic system to comply with all pertinent and required setbacks relating to wetlands. Attorney Maher stated the applicant meets the criteria necessary for a special exception

for a cottage colony which is permitted in the zone by special exception, and this has been before the planning board and received conditional approval that meets all the Site Plan requirements.

Ms. Ream questioned if there is anything in place to prevent people from re-renting, after leaving the property for a couple days, to get around the 30 day limit. Attorney Maher stated the applicant would not have a problem with not re-renting immediately. Under NH law the applicant has an incentive not to re-rent immediately as a court would see it as permanent tenants. Ms. Lawrence questioned how this proposal fits the definition of "colony". Attorney Maher explained a "colony" is a grouping which this proposal satisfies the "colony" component of the definition, as well as the "and other similar recreational facilities".

Mr. Wolph explained staff's review found the application to be complete. The application was brought before the Planning Board who were in favor of the "cottage colony" with seven (7) conditions precedent, which are listed on the staff review included in the packet. The mylar is to be recorded prior to issuance of the building permit, all proposed exterior lighting to be motion activated, the front cabin to be moved further to add distance from Route 33, an annual inspection of the drainage drip-edge to be performed by the Town Planner, applicant to coordinate with NH Department of Transportation to secure a driveway permit or documentation stating no such permit is required, site plan to be modified to illustrate Phase I and Phase II areas of cabin construction for mylar creation and subsequent recording reflecting those areas, map footprint for three (3) cabins toward the rear and two (2) cabins toward the front of the property with a note stating "for transient occupancy", and the applicant to obtain NH DES septic approval prior to issuance of building permits. Ms. Lawrence questioned what the timeframe is for how long building needs to begin after receiving special exception approval. Attorney Maher stated two (2) years to act upon the Special Exception which is RSA 674.33. Mr. Wolph stated Section 4, Table 4.2 of the Stratham Zoning Ordinance states the building coverage shall not exceed 20% and this proposal is well within that 20%. Mr. Dolan questioned if the soil scientist evaluated the parcel. Attorney Maher explained the wetlands have been delineated and the process of test pits is underway for the location of the septic. Mr. Federico questioned if all town departments have reviewed this proposal. Mr. Wolph stated yes. Mr. Federico questioned if the Conservation Commission has reviewed this proposal. Mr. Wolph stated that question would need to be answered by the Town Planner and the Planning Board. Bruce Scamman, Emanuel Engineering, stated he attended the Planning Board meeting and is not sure if a representative of the Conservation Commission was present and this proposal does not affect the wetlands or within the 25 ft. buffer so there is no impact on what the Conservation Commission would have jurisdiction over.

Mr. Dolan opened the hearing for public comment.

Dave Conroy, 11 Squamscott Road, voiced concern with transient people coming and going from the property.

Diane Conroy, 11 Squamscott Road, voiced concern with having a second business on the property and questioned if there will be a condition to limit expansion of more businesses. Ms. Conroy explained they moved to their property for a large piece of property with peace and quiet.

Peter Grey, 20 Squamscott Road, voiced concern at the size of septic which will be required (20 people plus the existing residence) and it was stated that there would be no effect on the wetlands but it is a fact that all the land drains down to Squamscott Road into a culvert through Mr. Grey's property and filters out to Great Bay which may be a concern. Mr. Dolan explained the Planning

Board has reviewed this proposal and this concern would have been addressed at that time.

Mr. Caparso made a motion to close the public hearing. Mr. Federico seconded the motion. Motion carried unanimously.

Mr. Wolph explained a definition has been offered through Webster's Dictionary as an example for "cottage" and "colonies". Mr. Caparso, Ms. Lawrence and Mr. Dolan voiced concern with the ZBA defining "cottage colony" and believes that to be for the Planning Board to make the definition. Mr. Federico stated the board will need to approve a definition if they want to put conditions on this proposal. Mr. Wolph explained staff reviewed the special exception application, not the narrative, which points to Article 3.6(B)(1). Mr. Wolph reminded the board they are only reviewing this application for a special exception to Article 3.6(B)(1) and not to the Gift Shop which was approved previously. Ms. Lawrence questioned how this proposal relates to the prior variance and any conditions which were contained in that application. Mr. Wolph asked for clarification from Ms. Lawrence whether she was asking about the Special Exception for the Home Occupation. Ms. Lawrence stated yes. The board requested time to review the minutes and conditions of the Home Occupation recently approved prior to voting on this proposal. Mr. Caparso questioned if there are other towns with "cottage colonies". Mr. Wolph is unsure of other towns with "cottage colonies" but has researched those with "RV parks", "vacation resorts", and other transient uses. Attorney Maher asked for clarification that the applicant would be able to speak to the minutes and notice of decision from the previous case.

Ms. Lawrence made a motion to continue the hearing for Case #642, 217 Portsmouth Avenue, to the March 12, 2019 hearing. Mr. Federico seconded the motion. Motion carried unanimously.

- b. **Case #643, Lindt & Sprungli (USA) Inc, One Fine Chocolate Place, Map 03 Lot 01, Industrial Zoning District.** Represented by Joshua Fenhaus of AECOM Hunt. The applicant requests a Special Exception per Article 4.3(e), Section IV of the Stratham Zoning Ordinance to permit the applicant to exceed the 35' height restriction.

Josh Fenhaus, AECOM Hunt, representing the proposal for Lindt & Sprungli explained the applicant is requesting a special exception for the height restriction. Mr. Fenhaus explained the site has several structures which have received prior approval to exceed the 35 ft. restriction. The applicant is in conceptual planning phase and is trying to receive approvals prior to going forward with detail design. Mr. Fenhaus stated 4.3(e) of the Zoning Ordinance states an applicant may apply to the ZBA to exceed height limit provided it is determined by the board the extra height will not create a safety hazard. Mr. Fenhaus explained the applicant will follow the requirements for planning board approval once they get through the conceptual stage. The mass tower height requested is 100 ft., the sugar silos are proposed at 90 ft., the building expansions are 47 ft., and the proposed 4-story parking garage is 56 ft. Mr. Federico questioned the height of the tallest structure currently on the site. Mr. Fenhaus stated the existing mass tower which is 66 ft. Mr. Caparso asked for clarification of the existing buildings and heights and the proposed buildings and heights. David Lanning, AECOM lead architect, explained the existing mass tower is 66 ft. and the proposed new mass tower would be 100 ft.; there are two existing sugar silos at 55 ft. and the two new sugar towers would be 90 ft. Mr. Dolan asked for clarification that the conceptual plans submitted show future planning. Mr. Lanning explained the submittal shows the board the full, maximum, buildout. Mr. Fenhaus explained the new mass tower, the parking garage, and the building expansions are being planned for immediate build. Mr. Lanning explained the majority of the facility is at 45 ft. from grade and the finish goods warehouse is 26 ft. high above where the main production facility is and the heights of that warehouse is 45 ft. Mr. Federico questioned if life safety measures regarding building height and garage height have been discussed with the Fire Chief. Mr. Lanning stated the garage was not

discussed with the Fire Chief, but the tower has been. The building, which is for mass production, is 7-stories, which is 100 ft. from grade, the upper six levels are all unoccupied spaces, meaning no employee is up in the tower for an extended period of time other than regular maintenance of the equipment. Height and maximum travel distances are within building code requirements, providing two means of egress with an interior stair including a fire riser for direct fire hookup and an exterior stair for a second means of egress down the building. The current Stratham ladder truck does not reach that height and the according to the fire department resources are shared with North Hampton which has a fire ladder truck that can reach that height. Mr. Caparso questioned if the site has municipal or well water. Mr. Lanning stated the water is municipal and there is a, roughly, 50% anticipated increase. Mr. Fenhaus stated there are two (2) drone videos to see the elevation of the mass towers at 100 ft. and the sugar silos at 90 ft. which includes 360 degree view as well as a still photo. Mr. Wolph explained the footage was taken to show that the abutters would not be able to see the towers at that height. Ms. Ream questioned the current 35 ft. height requirement. Mr. Federico explained the maximum height of fire truck ladders currently is 35 ft. The applicant played and explained the drone footage to the board. Ms. Lawrence questioned if the existing buildings were approved by special exception or variance for the height restriction. Mr. Federico and Mr. Wolph stated yes. Ms. Lawrence questioned if the towers would be visible from Route 101. Mr. Lanning stated the applicant has preliminary renderings which do not show it to be visible. Mr. Dolan questioned if the tower will be 100 ft. or the entire section of the building. Mr. Lanning stated just the vertical production area will be 100 ft. Mr. Caparso questioned if the previous parking lot was built. Mr. Fenhaus stated no. Mr. Caparso asked where the runoff for the parking. Mr. Lanning stated the runoff will go to the detention pond. Mr. Wolph reminded the board that their approval is only based on the height limit, and the determination is it will not create a safety hazard and the Planning Board purview is for runoff, noise, traffic, etc. Mr. Federico stated one of his concerns is the parking structure having to rely on mutual aid services in the event of a fire and would like to see some additional height for the fire department or a type of suppression system to alleviate any explosion or fire. Mr. Caparso questioned what the anticipated number of jobs that will be added. A Lindt representative stated roughly 50-100 jobs in the factory. Mr. Fenhaus stated the applicant has begun the traffic study process per planning board request. Ms. Lawrence asked for clarification of number of building expansions requested. Mr. Lanning stated the building expansion to the existing facility will be a two prong expansion; Building "BE", which includes the mass production to the southwest side of the facility, and the "AE" expansion to the northeast side of the facility. Mr. Dolan questioned if the parking garage is completely new or an expansion. Mr. Lanning stated the garage is all new. Mr. Wolph reminded the board their review of this application is only for the height restriction and not whether the applicant can move forward with the project as a whole.

Mr. Dolan opened the hearing up for public comment.

Paul McDonald, 14 Haywick Drive, stated he believes his property is the closest abutter to the facility, approximately 150 ft. from the corner of Building "D". Mr. McDonald voiced concern with lighting, noise, and any potential second use of the power. Mr. McDonald stated he moved into the property a little over a year ago and the first encounter they had was with Building "B" and a security light shining through the woods and into their home. Mr. McDonald contacted Lindt and the facilities director came to the home and agreed the light was a problem and it was removed. Mr. McDonald asked if there was proposed exterior lights on the tower. Mr. Lanning stated the applicant has been in contact with FAA to confirm the applicant was under the regulations and FAA only requires emergency lighting on a structure over 200 ft. Mr. Lanning stated there will be man-door lighting which will be a downlight. Mr. McDonald stated there has been some issues with the noise coming from the three HVAC units on top of Building "D" and that is being worked on and questioned if there are HVAC units or devices being proposed on the tower which will generate noise. Mr. Lanning stated no. Mr. Lanning explained there are new HVAC units being proposed on

the roof at the 47 ft. lower level and if there are noise issues it would be addressed.

Mark Stevens, property owner of several industrial buildings on Marin Way, stated his questions are not in opposition, but to gain more information. Mr. Stevens questioned if the prior exemptions for height restriction were they variances or special exceptions. Mr. Dolan stated he was unsure. Mr. Wolph stated they would have been special exceptions based on the criteria. Mr. Stevens disagreed and stated they were variances and this application should be applied for as a variance. Mr. Wolph stated a variance would be if the land was not able to be use the land as intended due to other factors such as a cliff, wetland, a river running through, etc. Mr. Wolph explained the height specifically falls under Footnote "e" and states "the applicant may apply to the board of adjustment to exceed the height limit...". Mr. Stevens stated his interpretation of the ordinance is that a variance would be required. Mr. Stevens stated some homework needs to be done to establish how the other height relief was given. Mr. Stevens if the historical data is established that special exceptions granted prior height relief then the applicant can go forward with this application, if it was given in form of a variance Mr. Stevens believes a disservice is being giving relief under the special exception because the decision could be appealed by applying with the wrong application and procedure. Ms. Lawrence stated researching the past could be instructive, but if the reasoning does not make sense given the way the code is currently written it may not be relevant. Mr. Wolph stated the Town Administrator, Town Planner, and he arrived at the decision to suggest a special exception application be submitted as opposed to a variance was through the criteria and made a determination that regardless of what happened in the past, this administrations agrees the four (4) means to get to the meeting this evening was to apply for a special exception. Mr. Stevens disagreed and stated the Town Planner stated a variance would be required at the Preliminary Consultation hearing before the Planning Board. Mr. Lanning stated regardless of precedent, the Zoning Board has the authority to make the approval under Special Exception because the ordinances allow for it. Mr. Stevens stated the property has municipal water but the fire suppression is supplied by ponds and fire ponds. Mr. Stevens stated 8 months ago a car fire occurred at HD Smith and the first responders were North Hampton, Exeter, and then Stratham. Mr. Stevens stated the car fire caused \$3.5 million damage to the building. Mr. Stevens stated no issues with the height request if it was applied for correctly as a variance and sign off from the fire department or several fire departments regarding the safety issue. Mr. Stevens agreed a vertical design is an efficient use of land, it will not affect people in the area, Lindt is a good neighbor, and this application is approvable with some work.

Mark Devine, 4 Green Vale Drive, representative of the 76 home developed of Vineyards of Stratham, stated they are closest to the Liquor Plant. Mr. Devine voiced concern with the noise issues which were brought before the planning board and there are conditions put on the site plan approval for the addition in 2015. Mr. Devine voiced concern with the level of improvements being proposed, especially the mass height and how the mechanicals, HVAC, and the height of the roofs those systems will be installed on. Mr. Devine stated perspectives may need to be taken from the neighboring businesses and developments from their perspective back to Lindt and not the other way around. Mr. Fenhaus and Mr. Lanning explained pictures were taken today from each of the residential communities to show the perspective, but they were not in presentable format to bring this evening. Mr. Lanning stated he can forward that to the planning department for review.

Mr. Dolan stated no comments came forward and closed the public hearing. Ms. Lawrence asked if the Environmental Protection Agency treats noise as an emission or left to local ordinances. Mr. Lanning stated this is dealt with at the local municipality level through ordinances. John Pelletier, Lindt & Sprungli, stated he helped to remedy the noise issue at Haywick Drive and sound measurements were taken at the property line. Mr. Pelletier explained no thresholds were found so a preventative action was taken and installed sound protection on the admitter of noise on the older liquor plant building. On the new building construction all rooftop units have a sound barrier

352 installed. Mr. Pelletier stated Lindt is taking every step possible to minimize sound coming from the
353 facility.

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355 Mr. Federico made a motion to close the public hearing. Mr. Caparso seconded the motion. Motion
356 carried unanimously.

357
358 Ms. Lawrence made a motion to table Case #643 for further discussion guidance from the Code
359 Enforcement Officer regarding past height restriction approvals at One Fine Chocolate Place and
360 continue the hearing to the March 12, 2019 hearing. Ms. Ream seconded the motion. Motion
361 carried via 3 Yes (Mr. Dolan, Ms. Lawrence, Ms. Ream); 1 No (Mr. Caparso), and 1 Abstaining
362 (Mr. Federico) votes.

- 363
364 c. **Case #644, Caroline S. Robinson Trust, 61 and 62 Stratham Heights Rd, Map 02 &**
365 **05 Lot 14 & 81 respectively, Residential Agricultural Zoning District.** Represented by Bruce
366 Scamman of Emanuel Engineering Inc. The applicant requests a Special Exception per Article
367 3.6(E)(1 & 4), Section III, to operate as an event venue and rent its land and facilities to a non-profit
368 organization that will operate as “Non-Profit Lodge” and “Private School”.

369
370 Mr. Wolph explained an email was received this afternoon by the applicant’s attorney to request a
371 continuance of this hearing to a date specific.

372
373 Mr. Caparso made a motion to continue the hearing for Case #644 to the March 12, 2019 meeting
374 date. Mr. Federico seconded the motion. Motion carried unanimously.

375
376 **4) New Business**

377
378 **5) Other Business**

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380 **6) Adjournment**

381
382 Mr. Caparso made a motion to adjourn at 8:58 pm. Mr. Federico seconded the motion.
383 Motion carried unanimously.