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3 **Stratham Zoning Board of Adjustment**  
4 **Meeting Minutes**  
5 **April 28, 2020**  
6 **Virtual Meeting/ Conference Call**  
7 **Time: 7:00 PM**  
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10 **Members Present:** **Garrett Dolan, Chairman**  
11 **Bruno Federico, Full Time Member**  
12 **Drew Pierce, Full Time Member**  
13 **Phil Caparso, Full Time Member**  
14 **Richard Goulet, Alternate**  
15 **Tana Ream, Alternate**  
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17 **Members Absent:** **Amber Dagata, Full Time Member**  
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19 **Staff Present:** **Shanti Wolph, Code Enforcement Officer/Building Inspector**  
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21

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

23 Chairman Dolan called meeting to order at 7:10 PM and took roll call.

24 **2. Approval of Minutes**

25 **a. March 24, 2020**

26 Mr. Dolan reviewed the minutes with the Board. Mr. Dolan recognized Mr. Goulet as a voting  
27 member. Mr. Pierce, Mr. Caparso, Mr. Goulet and Ms. Ream recused themselves from voting on  
28 the minutes because they were absent for the March 24<sup>th</sup> Meeting.

29 Mr. Federico made a motion to approve the March 24, 2020 meeting minutes as presented. Mr.  
30 Dolan seconded the motion. Mr. Dolan took roll call: Dolan Aye; Federico Aye.

31  
32 **3. Public Hearing(s)**

- 33 **a. Case #653, Sherrie Zirkle, 25 Bunker Hill Ave, Map 13 Lot 125, Residential**  
34 **Agricultural Zoning District, represented by Sherrie Zirkle of 25 Bunker Hill Ave,**  
35 **Stratham, NH. The applicant requests an Equitable Waiver of dimensional**  
36 **requirements from Section IV, Article 4.2 of the Stratham Zoning Ordinance to**  
37 **allow a 34” encroachment of an existing garage onto the required 20’ property line**  
38 **setback.**

39 Mr. Dolan asked Sherrie Zirkle to speak to her application.

40 Mr. Pierce recused himself because he is an abutter.

41 Mr. Dolan assigned Ms. Ream to be a voting member.

42 Mr. Wolph said that Ms. Zirkle responded to the questions that the application form asked for.

43 Ms. Zirkle said that she was living in California at the time of the purchase of the property. She  
44 hired a contractor to demolish and rebuild a new, larger garage on her newly purchased property  
45 prior to moving to New Hampshire. The contractor was to take care of all permits and building  
46 requirements and build the garage before she moved. She said she was communicating with the  
47 contractor periodically meaning a few times a week. He never mentioned any issues he had with  
48 the siting of the garage, any setback requirements, and he reported constantly that everything was  
49 fine.

50 After the garage was almost complete, the contractor said he had been a little nervous about  
51 where the exact setback line was, but that the garage had passed inspection and a permit was  
52 issued. He never mentioned that there was a problem that would require a variance. Ms. Zirkle  
53 said long after the garage was built, she found out through the Building Inspector that the permit  
54 did not mean that she didn't need a variance and that she would still need one.

55 She said in hindsight she believed the problem was that the existing well cap was in the way of  
56 moving the garage closer to the house and well out of the way of the setback. She believes the  
57 contractor just blew it off and forged ahead, leaving her to deal with the problem long after he  
58 was gone.

59 Ms. Zirkle said a small portion (34") of the garage back corner is in the 20' setback of the  
60 adjacent wooded (natural forest) parcel owned by the Town of Stratham. She thinks the parcel  
61 was donated to the Town because it is too small to be built on. She does not think her  
62 encroachment will have any noticeable or damaging impact on any potential use of the land.

63 Ms. Zirkle said that the cost to tear down the back/side portion of the garage and rebuild would be  
64 about \$17,000 and would affect the value/use of the garage.

65 Mr. Dolan said that if she is satisfied with her case, he will open the Board to questions.

66 Mr. Federico asked if the Town notified the contractor that he needed to have a variance to build  
67 the way he was going to build.

68 Ms. Zirkle said that she believed the contractor built before the first building inspector came.

69 Mr. Wolph said this transpired before he was the Town Building Inspector. His involvement was  
70 sending out the violation notices. The prior Building Inspector did review the application and sign  
71 it. The Building Inspector proceeded to perform inspections and never asked the builder for a  
72 foundation certification. That is a document provided by a licensed surveyor to make sure that  
73 they are in the boundary of the setbacks. This did not happen until the home was complete. Mr.  
74 Wolph reviewed the certification and immediately saw it was out of compliance which is why  
75 they are hearing the case. He believes it was missed by the Builder and he believes it was done  
76 unintentionally. He thinks it was a mistake that was discovered after the garage was built.

77 Mr. Federico said that there is nothing they can do because it is not the Builder nor the Owner's  
78 fault.

79 Ms. Zirkle said that the contractor never said anything to her about the violation even after he  
80 knew.

81 Mr. Federico asked who the contractor was.

82 Ms. Zirkle said his name is Robert Lang.

83 Mr. Federico asked Mr. Wolph if the builder has done other work in Stratham.

84 Mr. Wolph said that he has done other work in Stratham.

85 Mr. Dolan said that he has no further questions. He said requested in the application, since the  
86 mistake was not found prior to building, there should be equitable relief.

87 Mr. Caparso asked Mr. Wolph if the permit was pulled and then there were no inspections or if  
88 the permit was pulled too late. He asked if Mr. Wolph could walk through the timeline.

89 Mr. Wolph said the applicant applied for the building permit to build the home and the garage,  
90 the permit application was found to be complete during review, the plans were sufficient  
91 structurally and even setbacks. On the application documentation the setbacks were correct and at  
92 the time the existing Building Inspector agreed to signing and giving the okay to build. The  
93 applicant also signed that and in every building permit there is a language that says you need to  
94 comply with building code and that is a binding contract. Mr. Wolph said that the Builder was  
95 building close to the setback line. The problem was that the building Inspector did not ask for a  
96 foundation certification right when the foundation was poured. Mr. Wolph said that is protocol  
97 because if there is a problem, that's the time to fix it. The foundation certification was not  
98 requested and delivered to the town until the structure was complete.

99 Ms. Ream said she has no questions.

100 Mr. Goulet said he has no questions.

101 Mr. Dolan asked if there are any members of the public who would like to address the  
102 application.

103 Mr. Caparso made a motion to close the public hearing and Mr. Goulet seconded. Mr. Dolan took  
104 roll call: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Ream, Yes.

105 Mr. Dolan said that the variance for the equitable waiver of dimensional requirements from  
106 Article 4.2 of section IV in the Stratham Zoning Ordinance.

107 Mr. Dolan said on page 6 of the application Ms. Zirkle answered the questions from the Zoning  
108 Ordinance.

109 Mr. Dolan read the questions from the application:

110 2. Explain how the violation was not noticed or discovered by any owner, former owner, owner's  
111 agent or representative, or municipal official, until after structure in violation had been  
112 substantially completed, or until after a lot or other division of land in violation had been  
113 subdivided by conveyance to a bona fide purchaser for value.

114 Mr. Dolan took roll call for approval on question 2: Dolan Yes; Federico, Yes; Caparso, Yes;  
115 Goulet, Yes; Ream, Yes.

116 3. A) Explain how the violation was not an outcome of ignorance of the law or Ordinance, failure  
117 to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner or owner's agent  
118 or representative, but was instead caused by either a good faith error in measurement or  
119 calculation made by an owner or owner's agent, or by an error in Ordinance interpretation or  
120 applicability made by a municipal official in the process of issuing a permit over which that  
121 official had authority.

122 Mr. Dolan took roll call for approval on question 3: Dolan Yes; Federico, Yes; Caparso, Yes;  
123 Goulet, Yes; Ream, Yes.

124

125 4. Explain how the physical or dimensional violation does not constitute a public or private  
126 nuisance, nor diminish the value of the property in the area, nor interfere with or adversely affect  
127 any present or permissible future uses of any such property.

128 Mr. Dolan took roll call for approval on question 4: Dolan Yes; Federico, Yes; Caparso, Yes;  
129 Goulet, Yes; Ream, Yes.

130 5. Explain how, that due to the degree of past construction or investment made in ignorance of the  
131 facts constituting the violation, the cost of correction so far outweighs any public benefit to be  
132 gained, that hit would be inequitable to require the violation to be corrected.

133 Mr. Dolan took roll call for approval on question 5: Dolan Yes; Federico, Yes; Caparso, Yes;  
134 Goulet, Yes; Ream, Yes.

135 Mr. Federico made a motion to grant the equitable waiver in regards to Ms. Zirkle's application  
136 regarding an equitable waiver of dimensional requirements from Article 4.2 section IV of the  
137 Stratham Zoning Ordinance to allow a 34" encroachment on a 20' setback for the corner of a  
138 garage. Mr. Goulet seconded the motion.

139 Mr. Dolan took roll call: Dolan Aye; Federico, Aye; Caparso, Aye; Goulet, Aye; Ream, Aye.

140 Mr. Dolan said there is a 30-day waiting period for any abutter to take court action that they deem  
141 necessary.

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143 **b. Case #654, Cynthia M. Gibb, 8 Orchard Hill Rd, Map 05 Lot 72, Residential**  
144 **Agricultural Zoning District, represented by Cynthia M. Gibb of 8 Orchard Hill Rd,**  
145 **Stratham, NH. The applicant requests a Special Exception as specified in Section V,**  
146 **Article 5.13 of the Stratham Zoning Ordinance to allow a Home Occupation: The**  
147 **proposed use is a Wellness Studio.**

148 Ms. Ream recused herself because she is an abutter.

149 Cynthia M. Gibb introduced herself to the Board and explained her application. She is seeking a  
150 special exception as specified in Section 5 Article 13 of the Zoning Ordinance to permit a home  
151 occupation. The proposed use is as a Wellness Studio offering private 1:1 nutritional counseling,  
152 personal training Yin Yoga and Barre instruction, energy work sessions (Reiki), guided meditation.  
153 This would be a part-time and hours by appointment only (no set "open" hours). She is interested in  
154 collaborating with other practitioners within the Stratham community to offer fun, relaxing small-  
155 group workshops, perhaps on a monthly basis. She said her proposal meets the special exception  
156 criteria as specified in Article XVII, Section 17.8.2 of the Zoning Ordinance.

157 Ms. Gibb read each criteria and read her answer to each question:

158 1. The proposed use meets the standards provided by this ordinance for the particular use permitted  
159 by special exception because:

160 This part-time business use would be clearly secondary to their residential usage. All conditions  
161 will be met.

162 A) The total acre occupied for business use is less than 25% of the total square footage of the  
163 entire residence, including the finished basement. Total square footage = 3,871. Total square  
164 footage of studio = 868. Therefore, the studio square footage is <23% of the total square  
165 footage. Also, the finished garage addition with studio above fits in beautifully with the  
166 residential character of the premises within.

167 B) The home occupation and conduct thereof will be very peaceful, serene and quiet, thereby not

- 168 impairing the residential character of the premises. There will be no injurious, noxious or  
169 offensive odors, fumes, dust, smoke, etc. ever.
- 170 C) As the owner of the residence, she will be the only one working within the home occupation.  
171 She will continue to reside onsite, and it is her residence primarily, part time place of  
172 business, secondarily.
- 173 D) She is looking for the special exception to be granted only for the aforementioned use and  
174 nothing else. Should she not utilize the space for its proposed use for 12 months, she  
175 understands it will expire, and she understands she must re-apply for reinstatement.
- 176 E) There will be no one outside the immediate family, nor anyone in the family employed or  
177 engaged in the conduct of the business, other than herself.
- 178 F) There will be no accessory building storage or exterior storage necessary for this proposed  
179 use.
- 180 G) She is unsure as to whether she will sell any accessory finished goods, however, she  
181 understands that if she does, they will be sold and stored in the allowed home occupation  
182 space only.
- 183 H) There will never be any regular or frequent service by heavy commercial trucks greater than  
184 26,000 pound gross vehicle weight.
- 185 I) There is sufficient off-street parking in their driveway for clients. There will be no business  
186 vehicles. Any required deliveries will be in keeping with that of a residential delivery, and  
187 never outside of the 7am-7pm time slot.
- 188 J) The business is not contrary to any covenants of conditions contained on the deed to the  
189 property.
- 190 K) No signage is required or desired.
- 191 2. No Hazard to the public or adjacent property on account of potential fire, explosion, or release of  
192 toxic materials will result because:
- 193 No fire, toxic materials or anything that would potentially cause an explosion will ever be utilized  
194 with the provision of any of her offered services.
- 195 3. No detriment to property values in the vicinity or change in the essential characteristics of a  
196 residential neighborhood on account of the location or scale of buildings and other structures,  
197 parking area, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration,  
198 or unsightly outdoor storage of equipment, vehicles or other materials will occur because:
- 199 Her services will be offered in their newly build studio above new detached 2-car garage which  
200 actually increases the property value. It looks very residential, in keeping with the neighborhood.  
201 None of the above listed pollutants (or any unlisted pollutants) will ever be present.
- 202 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in  
203 the vicinity as a result of the proposal because:
- 204 She plans to see clients one at a time and by appointment only. They will utilize their existing  
205 driveway to park. If hosting a workshop, participation will be limited to 5 or less and if vehicles  
206 to happen to spill into the street, it would be no different than if they had guests visiting who  
207 parked on the street. She should mention that there infrequent workshops will be no more than 2-  
208 3 hours in length at most.
- 209 5. The use will not result in the excessive demand on municipal services, including, but not limited

210 to, water, sewer, waste disposal, police and fire protection, and schools because:

211 Due to the small amount of clients on the premises, water and sewer usage will be minimal. There  
212 will be no reason or occasion to use more water than normal. Police and fire protection will also  
213 remain unchanged, and there will be no impact on schools.

214 6. There will be no significant increase of storm water runoff onto adjacent property or streets as a  
215 result of the proposed use because:

216 Storm water runoff onto adjacent property if streets will remain unchanged from current  
217 residential runoff.

218 Ms. Gibb said with regard to the 8 abutters, she has received comments from 6 of them, all voicing  
219 support for her business. She read the comments:

220 From Kimberly and Joshua Cooper at 9 Orchard Hill Road: Hi Cindy, I wanted to let you know that  
221 we both support your home business, you've always been a super considerate neighbor, I hope it goes  
222 really well. Your addition looks nice too. As far as we're concerned you are wonderful neighbors  
223 who could do whatever you wish.

224 From Melissa and Seth Gahr at 5 Orchard Hill Road: I am so excited for you, that garage is looking  
225 awesome, sounds like a fun endeavor for you. I will love Barre classes.

226 From Elain and Rick Hayden at 6 Apple Way: Hi friend, I just picked up the very short letter from  
227 the Zoning Board, no problem at 6 Apple Way with having your wellness studio.

228 From Greg and Chelsey Babbin at 49 Stratham Heights Road: Congratulations on all your  
229 accomplishments this year, we're super happy for you and your new business, totally won't bother us  
230 and I hope nobody in the neighborhood puts up a stink. Let me know once you have a website, I'll be  
231 happy to check it out.

232 From Bill McCarthy and Ana Egana at 51 Stratham Heights Road: Dear Cindy May, we've received  
233 your letter describing your new venture and we wanted to let you know that we have no concerns and  
234 wish you luck and success, this sounds very exciting and fulfilling. We also received a letter from the  
235 town notifying us of the meeting with the ZBA, please feel free to present this email to the ZBA as a  
236 letter of support.

237 From John Kunowskie and Richard Benefield at 55 Stratham Heights Road: Cindy, thanks for your  
238 letter, we got the hearing notice from the town yesterday, so this additional clarification is  
239 appreciated. We have no issues or concerns and wish you well on this new venture.

240 Ms. Gibb said that was all she had to present.

241 Mr. Caparso asked if they can accept the abutter letters as evidence since they are not part of the  
242 packets.

243 Mr. Wolph said that they received the letters the day of the meeting, according to the statute it is too  
244 late to put them into the package because the package had already been on the Town website.  
245 However, he can say that he reviewed the letters with the signatures from the abutters. He would  
246 advise the Board to do whatever they feel comfortable with.

247 Mr. Federico asked the applicant if she is only going to have one client at a time.

248 Ms. Gibb said yes it will be one on one.

249 Mr. Dolan said that she mentioned that she may have group sessions with 5 or less people.

250 Ms. Gibb said that she would like to have group workshops once a month with 5 or less people.

251 Mr. Dolan said the building has a bathroom facility and kitchenette facility with a sink, he asked if

252 she had all the necessary septic lines.

253 Mr. Wolph said the building is new and everything is up to state and local building code.

254 Mr. Caparso asked the applicant about the once a month workshops and if that they are planning to  
255 have 5 people or 5 vehicles.

256 Ms. Gibb said that she would put in writing that there would not be more than 5 vehicles at a time.

257 Mr. Caparso asked about the square footage of the driveway.

258 Ms. Gibb said she believed it is about 150 feet in length.

259 Mr. Wolph said it is 150 feet in length and widens at the top. It is at the end of the cul-de-sac. He  
260 believes there is plenty of room for 5 vehicles.

261 Mr. Pierce asked if anyone else will be working at the location.

262 Ms. Gibb said that it will just be herself.

263 Mr. Goulet asked Mr. Wolph if the NEADA requirements are met.

264 Mr. Wolph said that if the applicant cannot accommodate a client, then she would have to go to them.

265 Ms. Gibb asked if that law was for home businesses as well.

266 Mr. Wolph said that he asked the State and they said that their services need to be accessible.

267 Mr. Dolan asked the Board if there were any other questions.

268 Mr. Dolan opened it to the public and asked if they had any comments.

269 Nobody from the public had comments.

270 Mr. Goulet made a motion to close the public hearing and Mr. Dolan seconded the motion. Mr. Dolan  
271 took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce, Yes.

272 Mr. Dolan said the public hearing is closed.

273 Mr. Dolan said with regard to special exceptions, on page 140 of the Zoning Ordinance section  
274 17.8.2, Special Exceptions. The Board shall hear and decide request for Special Exceptions provided  
275 for in this ordinance, the Board shall grant requests for Special Exceptions which are in harmony  
276 with the general purpose and intent of this ordinance meet the standards of this section. Appropriate  
277 conditions as set forth in subsection 17.8.2 (b) may be placed on Special Exception approvals when  
278 necessary. The Board shall deny requests for Special Exceptions that do not meet the standards of  
279 this section. Special Exceptions shall meet the following standards:

280

281 A. Standards provided by this Ordinance for the particular use permitted by special exception;

282 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
283 Yes.

284 B. No hazard to the public or adjacent property on account of potential fire, explosion, or release of  
285 toxic materials;

286 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
287 Yes.

288 C. C. No detriment to property values in the vicinity or change in the essential characteristics of a  
289 residential neighborhood on account of the location or scale of buildings and other structures,  
290 parking area, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration,

291 or unsightly outdoor storage of equipment, vehicles or other materials;

292 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
293 Yes.

294 D. No creation of a traffic safety hazardous or substantial increase in the level of traffic congestion  
295 in the vicinity;

296 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
297 Yes.

298 E. The use will not result in the excessive demand on municipal services, including, but not  
299 limited to, water, sewer, waste disposal, police and fire protection, and schools;

300 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
301 Yes.

302 F. There will be no significant increase of storm water runoff onto adjacent property or streets;

303 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
304 Yes.

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306 Mr. Dolan said Special Exception approvals may be subject to appropriate conditions including the  
307 following;

308 1. Front, side and rear yards in excess of the minimum requirements.

309 2. Screening of the premises from the street or adjacent properties by walls, fences or other devises.

310 3. Modification of the exterior features of the buildings or other structures.

311 4. Reasonable limitations on number of occupants and methods and times of operation.

312 Mr. Dolan commented that the applicant already agreed to a limitation of 5 vehicles in the  
313 driveway and not more than 5 people for group activities.

314 Ms. Gibb asked if she could have more than 5 people if there are only 5 vehicles.

315 Ms. Gibb said that she will accept the condition of no more than 5 vehicles once a month.

316 Mr. Dolan confirmed that her hours will be between 7am and 7pm.

317 Ms. Gibb said they would be.

318 5. Designing the premises for proper drainage.

319 6. Regulations of access drives, sidewalks and other traffic features.

320 7. Regulation of the number, size and lighting of signs.

321 Mr. Dolan said with the completion of the Special Exception criteria and 5 votes in the  
322 affirmative on all 6 questions, a motion to grant the special exception is in order.

323 Mr. Caparso made a motion for Special Exception with the criteria outlined with no more than 5  
324 cars once a month and operation hours between 7am and 7pm. Mr. Goulet seconded the motion.

325 Mr. Dolan took a roll call vote: Dolan Yes; Federico, Yes; Caparso, Yes; Goulet, Yes; Pierce,  
326 Yes.

327 Mr. Dolan said with 5 votes in the affirmative, the Special Exception is granted. He will notify  
328 her that someone may appeal the decision of the Board within the next 30 days.

329 Ms. Gibb thanked the Board.

330

331 **4. New Business:** None.

332 **5. Other Business:** None.

333 **6. Adjournment**

334 Mr. Caparso moved to adjourn meeting at 8:35 PM and Mr. Dolan seconded. Motion passed  
335 unanimously.

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352 Note(s):

353 1. Materials related to the above meeting are available for review at the Municipal Center during normal  
354 business hours. For more information, contact the Stratham Building/Code Enforcement Office at  
355 603-772-7391 ext.180.

356 2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or  
357 vote on items that are not listed on the agenda.