



**Stratham Zoning Board of Adjustment
Meeting Minutes
November 10, 2020
Municipal Center/Virtual Meeting/ Conference Call
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Bruno Federico, Full Time Member
Drew Pierce, Full Time Member
Phil Caparso, Full Time Member
Richard Goulet, Alternate

Members Absent: Amber Dagata, Full Time Member
Tana Ream, Alternate

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

1. Call to Order/Roll Call

Chairman Dolan called meeting to order at 7:00 PM and took roll call.

2. Approval of Minutes

a. April 28, 2020

Mr. Dolan stated there are some typographical errors. Mr. Dolan asked Mr. Goulet to be a voting member for this meeting in place of Ms. Dagata's absence. Mr. Goulet agreed.

Mr. Caparso made a motion to approve the April 28, 2020 meeting minutes as amended. Mr. Goulet seconded the motion. Motion passed unanimously.

3. Public Hearing(s)

Mr. Caparso made a motion to end the hearing at 10:00 pm and continue to December 8, 2020 if more time is required. Mr. Federico seconded the motion to end the meeting at 10:00 pm with a continuation if not complete. Motion passed unanimously.

Mr. Wolph stated the next ZBA hearing date is November 24, 2020 (official next ZBA hearing date) or December 8.

- 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

45 Stratham Planning Board granting approval of the Cleary subdivision; a minor subdivision
46 application for 7 Boat Club Drive, Tax Map 08, Lot 39 owned by Robert and Stephanie Cleary,
47 pursuant to RSA 676:5, on the grounds stated in the appeal document submitted 10/01/2020.
48

49 Attorney Ken Murphy introduced himself as the representative for Phil & Stephanie Malone.
50 Attorney Murphy stated Phil Malone and Eric Weinrieb, PE, Atlas Engineering were present at
51 this meeting.
52

53 Attorney Murphy asked to address the letter received by Attorney Pasay on behalf of the Cleary's.
54 Attorney Murphy stated his client filed an Appeal for Administrative Decision due to the Planning
55 Board paperwork the Cleary's took the position that an Administrative Decision was made back
56 in March 2020 that a variance was not required. Attorney Murphy stated he had some discussions
57 with the Town Attorney and the Malone's were not aware the applicant came into the town and
58 had a discussion with someone in the town and was told no variance was required for the Planning
59 Board project. In the paperwork submitted by Attorney Pasay to the Planning Board stated
60 compliance with all zoning regulations. Attorney Murphy stated whether this application is a
61 formal Appeal of Administrative Decision or an Appeal of a Planning Board decision that
62 interpreted a zoning ordinance his client would be before the Zoning Board. Attorney Murphy
63 stated RSA 676:5, which was referenced in the letter received today, either appeal has a zoning
64 component and would be heard by the Zoning Board of Adjustment. Attorney Murphy read
65 Section III of RSA 676:5; "If in the exercise of a subdivision or site plan review the planning
66 board makes any decision or determination which is based upon the terms of the zoning
67 ordinance, or upon the construction, interpretation or application of the zoning ordinance, which
68 would be appealable to the Board of Adjustment if it had been made by the administrative officer
69 then such decision may be appealed to the Board of Adjustment under this section." Attorney
70 Murphy stated his client appealed this decision correctly. Attorney Murphy explained the
71 chronology that after the decision was made by the zoning officer that no variance was required
72 the applicant went through the Planning Board process, there was a hearing and it was continued
73 and the hearing was held in September. Attorney Murphy stated that during that hearing this issue
74 came up and the exact words are in the Site Plan Regulations and in the Zoning Ordinance. The
75 Planning Board granted the Subdivision application and his clients are before the Board of
76 Adjustment for appealing that decision. Attorney Murphy stated the Board of Adjustment
77 whether the Cleary's are required to get a variance or not.
78

79 Mr. Caparso questioned the timeline of appealing the decision and stated there is a 30 days to
80 appeal a decision and this decision was made back in March and the deadline was missed. Mr.
81 Caparso asked why the deadline is not germane if the law is specific. Attorney Murphy does not
82 believe the law is an appeal of an administrative decision in any formal sense and they are
83 bringing it forward since the planning board paperwork the applicant's attorney reiterated this
84 cannot be brought up because back in March the administrative officer made the decision and his
85 client was unaware of that decision. Attorney Murphy stated there was no way for his client to
86 appeal the decision that was made. Mr. Caparso stated he is unclear as Section 2 of the
87 application, Decision of the Administrative Official to be reviewed, states "Please refer to appeal
88 document field with Town of Stratham, as included in this packet" and the appeal document reads
89 as an appeal is being requested from the administrative decision and not arguing on Land Use.
90 Attorney Murphy explained he is trying appealing both the Planning Board decision and the
91 administrative decision of the zoning officer. Mr. Caparso questioned if the Planning Board is
92 required to give notice to neighbors on a hearing with impact to the neighborhood. Attorney
93 Murphy stated abutters receive notice of public hearings of the planning board. Attorney Murphy
94 stated the planning board paperwork that the Cleary's lawyers submitted a question asked by the
95 abutters was has the Stratham Zoning Board been involved in this application. Attorney Pasay
96 wrote no, by administrative decision by Tavis Austin and Shanti Wolph on March 5, 2020 no

97 variance relief from the town's ordinances are required because the regulation in question appears
98 in both the Zoning Ordinance and the Planning Ordinance. Mr. Caparso questioned if the abutters
99 were noticed of this meeting. Attorney Murphy stated yes, and they attended via person or on the
100 phone. Attorney Murphy explained the decision in March made by Mr. Wolph, whether it was
101 formal or informal, and his clients were not notified of that decision.
102

103 Mr. Dolan stated that the March meeting was not a formal noticed meeting. Mr. Wolph explained
104 that the Land Use Department is contacted every day via phone calls, emails, inquiries, etc. on
105 how to proceed with an application. Mr. Wolph stated the department advised the resident on
106 how to proceed with their application. Mr. Wolph explained, as the building inspector, he has no
107 authority when it comes to planning board subdivision regulations and the decision was made by
108 the town planner who advised the board on how to move forward and queried Mr. Wolph during
109 the meeting with Attorney Pasay. This meeting was an informational meeting, nothing in writing
110 or memorialized. Mr. Dolan asked for clarification from Mr. Wolph that there was no notice of
111 the March meeting, no public invitation, no public record kept, no quorum, or no board, which
112 explains the reason for the plaintiff to be aware of that meeting.
113

114 Eric Weinrieb, Altas Engineering, introduced himself as having over 35 years of experience in
115 site development working with land development clients and for municipalities. Mr. Weinrieb
116 distributed a Millennium Engineering drawings representing what a house would look like placed
117 on this property to the board. Mr. Weinrieb explained the plan speaks to Section 11.5, adequately
118 accommodating housing, sewage disposal, and utilities within the applicable setbacks. Mr.
119 Weinrieb stated the Millennium plan supports the Malone's concerns that the lot is challenged and
120 is not adequate for development. Mr. Weinrieb explained the test pits are adequate to sight a
121 septic in that area and how the lot shows the requirements for building a house. Mr. Weinrieb
122 stated when the plan is scaled having a garage and pulling out would be a challenge and there is
123 not adequate space to sight everything required in the applicable setbacks. Mr. Weinrieb
124 explained the grading for the septic and it does not meet the criteria of Section 11.5. Mr.
125 Weinrieb explained the way the grade pitches from the site now based on the plan is a high point
126 at the intersection of River Road and Boat Club Drive which redirects the runoff towards the
127 westerly property line. Mr. Dolan questioned if these issues were addressed by the Planning
128 Board during site plan review. Mr. Wolph explained what happened at the Planning Board. A
129 30,000 SF upland portion of the parcel wouldn't be suitable with the wetland setbacks to
130 accommodate the home, septic, well, and utilities which is the ordinance in Subdivision
131 Regulations specifies. Mr. Wolph explained the Cleary's asked for a waiver to that section
132 because there is another 20,000 SF parcel of land in that lot which does accommodate the home,
133 septic, well, and utilities for the required setbacks. The Planning Board and the former Town
134 Planner gave a waiver from the required section for the 20,000 SF parcel which accommodates
135 everything required. Mr. Wolph stated this was addressed at the Planning Board level and the
136 applicant was granted a waiver for the split to take place. Mr. Weinrieb explained subdivision
137 regulations was discussed, but Section 11.5 was not discussed which requires all of the utilities
138 occur on the property which cannot be accommodated and supports the need for a variance.
139

140 Mr. Pierce questioned if the drainage could be altered to keep the grading on the property and if
141 the plan could be corrected prior to submitting a building permit. Mr. Weinrieb stated the
142 information presented on the plan does not work and does not meet the Stratham ordinance. Mr.
143 Wolph explained this subdivision approval was not a building permit approval and it was only to
144 subdivide the land from 1 parcel into 2 parcels and must meet the subdivision regulation criteria.
145 One of the criteria addresses the 30,000 SF upland.

146 Attorney Murphy explained Attorney Pasay stated an Administrative Appeal has not been before
147 the Zoning Board and no variance relief from the town is required because the regulation in
148 question appears in both the Zoning Ordinance and the Subdivision Regulations.

Mr. Dolan asked if the board had questions in respect to the immediate case. Mr. Federico asked for clarification of the phase of this project. Mr. Wolph stated it has received subdivision approval with a waiver in lieu of a variance due to the regulation the applicant needed waived resides in the Subdivision Regulations, statutorily, and in the Town of Stratham ordinances and the Planning Board has the authority to grant this waiver. This exact regulation also lives in the Zoning Ordinance. Mr. Federico stated if the regulations grant the Planning Board the authority to waive a requirement the Board of Adjustment cannot rule against that. Attorney Murphy explained that the applicant will not be required to apply for a variance since the determination that was made in March and the Planning Board waived the regulation. Mr. Wolph explained the building inspector review and approval for building a home on a lot of record as a standard house lot.

Mr. Goulet stated the subdivision has been approved by the Planning Board and there are no issues that don't fit the zoning laws, the waiver has been granted and there is nothing for the Zoning Board to address. Mr. Dolan questioned whether the Zoning Ordinance or the Subdivision Regulations take priority which is the decision before the board. Attorney Murphy stated new evidence cannot be submitted at the Superior Court and they will decide if the Planning Board made an error.

Justin Pasay, DTC Lawyers in Exeter, is representing Robert and Stephanie Cleary at 7 Boat Club Drive. Attorney Pasay stated the board is not meeting to discuss the appearance of a block, concept block, for a house on a subdivision plan. Attorney Pasay explained his clients went before the Planning Board for subdivision approval and for an abundance of precaution a concept of a house was provided on the plan for the second lot. Attorney Pasay stated the appeal before the board should be denied because 1) its dressed up like an appeal from the planning board but it is really an appeal from an Administrative Decision which was made by Mr. Wolph and Mr. Austin in March and the seven day appeal started on the date that Attorney Murphy represents his client was aware of the decision which was September 1st. There was no appeal of that decision within 7 days and the appeal of that decision was more than 30 days later on October 2nd. 2) The appeal should be denied because the board, like Mr. Wolph in the first instance sitting as the town's Code Enforcement Officer, he is the individual who would decide whether a variance is required or not. The Zoning Board of Adjustment are the interpreters of the zoning ordinance and when the language of the regulation being discussed his applicant complied. Attorney Pasay distributed plans to the board (labeled Exhibit 2, 3a, and 3b) and explained the property and subdivision application for 7 Boat Club Drive. Attorney Pasay explained as the Cleary's went through the subdivision and zoning regulations it was noticed there are two identical provisions. Attorney Pasay read the passage that appears in Section 11.5 of the Zoning Ordinance and Section 4.3.1.b.1 of the Subdivision Regulations: "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." A meeting was scheduled in March 2020 with Attorney Pasay, Mr. Wolph and Mr. Austin to discuss this issue. Attorney Pasay stated a variance would not be required because this provision applies in the Subdivision Regulations and the Planning Board has the power to waive this. It was decided at the March meeting the Cleary's would not be required to apply to the Zoning Board of Adjustment for a variance from Section 11.5.1 and requested a waiver from the planning board for the 30,000 SF contiguous upland which was granted.

Attorney Pasay explained there are two main categories of Administrative Appeals. The first is an appeal from an administrative decision and defined by the statute as "any decision

involving construction, interpretation, or application of the ordinance”. The second is an appeal from planning board “where there is a decision or determination which is based upon the terms of the ordinance or upon any construction interpretation or application of the zoning ordinance.” An appeal must be a specific interpretation by the planning board, of the zoning ordinance, to allow a client to have jurisdiction to go to the ZBA. Appeals of Administrative Decision require 7 days and Appeals from a Planning Board decision require 30 days under the town’s regulations. The decision in March was a decision that involved the construction interpretation or application of the zoning ordinance. The appeal before the board is not an appeal from the Planning Board. The appeal document provided referenced the planning board in the first paragraph and there is no indication the planning board made the interpretation of the zoning ordinance, constructed a portion of the zoning ordinance, or referenced the zoning ordinance, see the planning board minutes dated 9/2/2020. The appeal documentation focuses on the administrative decision from March. Attorney Pasay explained when the application was filed with the Planning Board in July abutters questions were fielded and answered. In the supplemental filing, referenced by Attorney Murphy, Attorney Pasay wrote the March 2020 into the record and was not appealed at that time. Attorney Pasay stated 30 days after understanding the administrative decision was made and appeal is filed and this does not meet the requirements for jurisdiction because upon realizing there was a determination no appeal was filed within 7 days, which is the requirement. Attorney Pasay stated a variance from Section 11.5.1 is not required because the language in the regulations is met. Attorney Pasay ready Section 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 non-wetland 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.” Attorney explained while the ordinance states there must be 30,000 SF of contiguous upland, it does not specify that the house needs to be located there.

Mr. Wolph stated the application before the board tonight is a Zoning Board of Adjustment, Appeal from Administrative Decision. Mr. Wolph read Section 17.8.1, Administrative Appeals: “The Board shall hear and decide appeals from the decisions or orders of the Building Inspector and/or Code Enforcement Officer concerning administration or enforcement of this Ordinance. Such appeal shall be filed within seven (7) days of the order with the Code Enforcement Officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. Applications for appeal of a decision of the Planning Board must be filed within thirty (30) days from the issuance of the decision. The Code Enforcement Officer shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.”

Attorney Pasay stated this is the appropriate venue of an appeal from a planning board decision if, as stated in RSA 676:5.III. “If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance...” and their position is the field document before the board does not allege there was a determination, decision, interpretation, construction that was wrong by the Zoning Ordinance. The planning board reviewed the subdivision application and discussed the waiver, but this discussion happened with Mr. Wolph and Mr. Austin in March and the first time the Malone’s were aware of the contents of that discussion and the guidance his applicant received from the town that a variance was not required was on September 1, 2020.

Mr. Dolan asked if the board had any questions. No questions from the board came forward. Mr. Dolan opened the public hearing for public comment. No questions came forward.

Attorney Murphy asked the board to review the argument of the seven day appeal. Attorney Murphy stated the 7 days begins once someone is aware of the decision. Attorney Murphy stated the appeal before the board adequately addresses these issues and if a variance is required. Attorney Murphy stated 11.5.1 states “this contiguous non-wetland area...” refers to the 30,000 SF uplands not the 20,000 SF.

Mr. Dolan moved the board to deliberate the application before them tonight.

Mr. Caparso made a motion to close the public hearing and move to the discussion phase. Mr. Goulet seconded the motion. Motion passed unanimously.

Mr. Dolan asked Mr. Wolph if both sections of the ordinance were being referenced, why the applicant wasn’t informed the stricter interpretation of the ordinance should take preference. Mr. Wolph stated page 4 of the staff review “5.1 Waiver Procedure” the ordinance language is identical. Mr. Dolan questioned why the more restrictive and more controlling aspect used. Mr. Wolph pointed to 5.1 “the Planning Board may grant a waiver in a special case, so that justice may be done and the public interest secured...”. Mr. Wolph stated he was unaware that one regulation was subordinate to the other. Mr. Dolan stated the Subdivision and Site Plan Review regulations came into being after the Zoning Ordinance was established.

Attorney Abigail Karoutas, Town Counsel, stated it is unusual for the subdivision regulations and the zoning regulations to have identical provisions in them. It is not a question of whether one takes precedence over the other or is more restrictive, the issue is interpreting zoning regulations. Attorney Karoutas stated the issue is whether or not what Mr. Wolph and Mr. Austin told to the applicant in March was or was not an administrative decision or whether it as an issue to be decided.

Mr. Caparso asked for guidance on how the board would overturn a planning board decision. Mr. Wolph explained it is from the perspective of receiving an application regardless of the attorney for 7 Boat Club is arguing that the board would need to make a decision from the applicant’s application. The question is whether the Planning Board should have sent the applicant to the Zoning Board to require a variance as opposed to approving a waiver. The second is the administrative decision whether the building inspector had the ability to authorize this decision. Mr. Caparso stated he does not agree that the meeting held in March was an administrative meeting and it was up to the applicant and their counsel to make the final decision and not base the decision solely on the recommendation of the code enforcement officer. Mr. Pierce questioned if this is the wrong venue to have this decision made.

Mr. Caparso made a motion to re-open the public hearing. Mr. Pierce seconded the motion. Motion carried unanimously.

Attorney Murphy explained the zoning board hears appeals, jurisdictionally, based on the law of RSA 676:5. Attorney Murphy stated that if his client had found out about the decision that a variance was not needed and came before the zoning board in 7 days, the question would be asked if Mr. Wolph made a mistake in interpreting the ordinance by telling the applicant they did not need a variance. Attorney Murphy explained the board is being asked tonight to determine if Mr. Wolph was wrong in deciding that a variance was not required, or was the

301 planning board wrong in interpreting they complied with the zoning ordinance. The question
302 before the board tonight is:

- 303
- 304 1) Was code enforcement wrong in telling the applicant in March they did not need a
305 variance?
 - 306 2) Was the planning board wrong in interpreting the zoning ordinance correctly?
- 307

308 Mr. Caparso asked Attorney Murphy for clarification that he believes the meeting in March
309 was an administrative meeting. Attorney Murphy stated he did not know what it was. Mr.
310 Caparso questioned if Mr. Murphy agrees this was an administrative meeting back in March
311 and the appeal window is 7 days, why should the board waive the 7 day and consider this
312 tonight. Attorney Murphy stated it was not fair to the abutter who does not know about the
313 meeting and that decision affected the planning board and the applicant is not allowed to come
314 before the board. Mr. Caparso questioned if the applicant was notified of the planning board
315 hearing. Attorney Murphy stated yes and the applicant was present at the meeting.

316

317 Attorney Pasay stated there are two appeals that could come before this board. Attorney Pasay
318 explained he believes an administrative decision was made in March and he is not suggesting
319 Mr. Malone should have appealed within 7 days of that date, and when Attorney Pasay
320 deliberately answered the question of whether a variance was required was posed by Mr.
321 Malone in a correspondence to the planning board, Attorney Pasay responded and said it was
322 looked at and discussed with the town and no variance is needed. This issue was not discussed
323 at September 2, 2020 planning board meeting. The criteria was looked at for the waiver under
324 the subdivision regulations. Attorney Pasay explained the town then should have directed the
325 applicant to get a variance and that argument wasn't made. The question is this an
326 administrative decision and, if it is, was it timely appealed. Attorney Pasay does not agree it
327 was timely appealed and the latest cutoff for the appeal should be September 1, 2020. There
328 must be finality so an applicant has assurance going forward with the approvals. The Planning
329 Board did not discuss the zoning ordinance on September 2, 2020.

330

331 Mr. Caparso questioned if the zoning board is an appellate board to the planning board.
332 Attorney Pasay explained if the planning board made a zoning decision, the zoning board of
333 adjustment's job would be to either agree or not agree and would grant an appeal. Attorney
334 Karoutus explained the jurisdiction of this board to hear two types' appeals. Mr. Dolan
335 questioned if the zoning ordinance applies to the subdivision and site plan review process.
336 Attorney Karoutus stated it is up to the attorney's present to explain what they think applies or
337 not for the board to make a decision. Phil Malone, 72 River Road, stated during the planning
338 board meeting, possibly Rob, asked to question the town's attorney what the reasoning is
339 behind this rule being in both the planning and zoning and the planning board refused to check
340 with the town's attorney on this issue. Mr. Federico explained he was on the Board of
341 Selectmen in 2017 when the Town Planner came before that board and explained they would
342 like to have the regulation in both ordinances because it would give the town planner the
343 authority to waive certain components during the subdivision application process. Mr.
344 Federico stated the planning board did not have to work through those requirements at the
345 subdivision level when it will happen at the site plan level. When the building plans are
346 submitted the requirement would not be waived if the 30,000 SF was not there. Mr. Federico
347 that Mr. Austin added this to both regulations to give the planning board the authority to say
348 they don't need the regulation at this level in the subdivision process, but it will be needed
349 during site plan review if the setbacks are not met. Mr. Federico explained that once the
350 building permit is submitted and if the setbacks are not met then the applicant would need to

come before the board for a variance. Mr. Wolph stated the applicant meets all the setbacks and contiguous upland that would support some or all of the building components.

Mr. Caparso asked Town Counsel what metric can the zoning board overturn a planning board approval. Attorney Karoutus stated if the board is taking an appeal from the administrative decision then they have the power. If the board is taking an appeal from the planning board decision the board would review the information as if they are the planning board to make the decision. Discussion ensued regarding the difference between the planning board review and interpretation of the zoning ordinance. Mr. Malone stated he does not remember the specific details of the meeting and reaching out with the understanding for potential conditions of landscaping and screening and whether it was required. Mr. Malone states he looked at the minutes from the meeting, reviewed the appeal that was filed, and their position there is no specific discussion on how the planning board interpreted the zoning ordinance.

Mr. Dolan stated, per the planning board minutes it appears the zoning ordinance was discussed during the public hearing. Mr. Dolan and Mr. Caparso agreed that it is the board's responsibility to determine whether the planning board was the right place for the decision to be made. Mr. Caparso stated he was uncomfortable with this planning board decision. Mr. Caparso stated if one of the determinants with the zoning board voting for the appeal to move forward is the planning board was doing the zoning board's work and the board is uncomfortable with that, then Mr. Caparso is comfortable with hearing this appeal. Mr. Goulet stated the administrative decision is guidance that is provided on a daily basis as part of the process. As to the question of whether the planning board was interpreting for the zoning board, Mr. Goulet believes they were interpreting their own regulation language which happens to be in the zoning as well and it doesn't constitute interpreting a zoning law. Mr. Wolph explained the applicant's submittal references Section 4.3.1(b)(i) of the Subdivision Regulations. Attorney Pasay explained the reference Mr. Wolph is mentioning an excerpt from a letter that he wrote. Mr. Malone filed comments with the planning board and one of the questions was about the zoning ordinance. In response to Mr. Malone's question Attorney Pasay took the time to address all of the comments the abutters raised. Attorney Murphy stated this is evidence that all issues are in compliance with the zoning board. Mr. Caparso asked town counsel for clarification whether he, as a member of the zoning board, to vote for the appeal if he believes the planning board performed the zoning board's work and feels they were in error. Attorney Karoutus stated the board has the ability to vote to sustain the appeal if in making the subdivision decision the planning board interprets a zoning ordinance provision and it is felt they did that incorrectly.

Mr. Caparso made a motion to close the meeting to public comment. Mr. Pierce seconded the motion. Motion carried unanimously.

Mr. Wolph read the two questions before the board. Mr. Caparso made a motion for the board to vote on the two issues before them. Mr. Goulet seconded the motion. Motion carried unanimously.

- 1) Was code enforcement wrong in telling the applicant in March they did not need a variance?

Mr. Federico asked Mr. Wolph to explain why he told the applicant's they did not need a variance. Mr. Wolph stated his decision was based on the subdivision regulations specifically allow for a waiver of any conditions that live within the subdivision

regulations and the specific regulation they sought the waiver for lived in the subdivision regulations. Mr. Federico asked what the regulation was. Mr. Wolph explained Section 4.3.1, Minimum Lot Sizes, of the Subdivision Regulations has the requirements and the town planner, Attorney Pasay, and Mr. Wolph met and discussed the subdivision regulations. Mr. Wolph asked Mr. Austin what the waiver criteria and authority for the planning board to grant waivers. After reviewing the waiver criteria it does not speak to the zoning ordinance and it was Mr. Wolph's interpretation that this did not require a variance because the planning board had the authority to grant a waiver provided it met the criteria.

Mr. Caparso asked for clarification whether both parts of this appeal need to pass in order for it to move forward. Attorney Karoutus explained the board is being asked to vote on two issues that are independent of each other.

Mr. Caparso voted yes, Mr. Federico voted no, Mr. Dolan voted no, Mr. Pierce voted no, Mr. Goulet voted no. The votes are 4:1 the code enforcement officer was not wrong in telling the applicant in March they did not need a variance.

2) Did the planning board interpret the zoning ordinance incorrectly?

Mr. Caparso is uncomfortable with the planning board making zoning board decisions.

Mr. Caparso voted yes; Mr. Federico voted no, Mr. Dolan voted no, Mr. Pierce voted no, Mr. Goulet voted no. The votes are 4:1 the planning board did not interpret the zoning ordinance incorrectly.

Mr. Dolan stated the applicant has a 30 day time period to appeal this zoning board decision. Attorney Karoutus stated there is a Superior Court appeal that is pending on this substance of the planning board's decision which the zoning board does not have jurisdiction but the court does. There is a 30 day appeal period from this decision. Mr. Wolph asked if this decision was relevant to the court case. Attorney Karoutus stated this would be relevant only to the extent that this was appealed at the zoning board level.

4. New Business: None

5. Other Business: Mr. Wolph stated there have been several visits to the building department to discuss potential home businesses or variances from setbacks for single family homes due to a lot of activity in Stratham at the moment but no applications have come forward. Mr. Dolan inquired if board assignments are outstanding and due to be voted on. Caparso asked if the board could do a Zoom administrative meeting on the record to clean up housekeeping items. Mr. Goulet agreed as long as it meets the guidelines. Mr. Wolph stated a Zoom meeting would meet the guidelines.

6. Adjournment

Mr. Caparso made a motion to close the meeting at 9:40 pm. Mr. Goulet seconded. Motion passed unanimously.

Note(s):

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