



**Stratham Zoning Board of Adjustment
Meeting Minutes
April 11, 2017
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Bruno Federico, Board of Selectman Representative
Chris Brett, Full Time Member
Garrett Dolan, Full Time Member
Phil Caparso, Full Time Member
Deidre Lawrence, Full Time Member

Members Absent: Chris Cavarretta, Alternate

Staff Present: Tavis Austin, Town Planner

1) Call to Order/Roll Call

The Chairman took roll call and explained the procedure of the hearing to the applicants.

2) Approval of Minutes

a. January 31, 2017

Mr. Brett made a motion to accept the minutes of January 31, 2017 as written.
Mr. Caparso seconded the motion. Motion carried unanimously.

3) Public Hearing(s)

- a. Case #635: Joseph Nichols, Beals Associates PLLC, 70 Portsmouth Avenue, Stratham, NH 03885, for property located at 115 & 117 Union Road, Stratham, NH, Tax Map 15 Lot 39 and Lot 40.** A Variance application request from Stratham's Zoning Ordinance, Article 11.5.3 and Article 20.1 has been filed requesting relief from the current 50 foot setback and 25 foot buffer to poorly drained wetlands in order to develop the lot as originally approved by the town in 1973, and to allow a reduction from the requirement of

two test pits that have a minimum of 18 inches to 12 inches of natural permeable soil above the seasonal high water table beneath the sewage disposal area.

Mr. Dolan made a motion to accept the variance application for ZBA Case #635 as complete. Mr. Caparso seconded the motion. Motion carried unanimously.

Catherine Morin, NH attorney representing Mr. Jackson, introduced herself, the owner of the property, Mr. Jackson, and Joseph Nichols of Beals Associates. Ms. Morin explained the history of the property and showed the board the original subdivision plan from 1973, which approved the lots to be developed. Since the subdivision was approved, the two lots have been taxed as two separate lots, and the assessment card states “no wetlands known on the properties”. The owner has since discovered the properties contain wetlands. Ms. Morin explained the plan is to combine the two lots, which will total a little over two acres, into one lot. These lots were never built on and no home has been built on either property so there is no repair or rebuild situation. Mrs. Morin stated the regulation in the zoning has changed since 1972 and those changes, particularly as they relate to wetlands, has negatively impacted Mr. Jackson’s ability to build on the two lots. The purpose of the application before the board tonight is to prevent the existing ordinances from becoming over burdensome as it relates, specifically, to the two lots.

Ms. Morin stated the approval of these application would not be contrary to the public interest. If the property was developed back in 1973 there would be two homes, one on each lot, and they would be subject to the same regulations as Mr. Jackson is subject to today. The properties are a residential use and will decrease the density from two lots to one lot, while being surrounded by other residential properties in keeping with the character of the surrounding properties. The special conditions related to Mr. Jackson’s particular site is not generally applicable to the rest of the lots in the zoning district, which are the wetlands along the front, a small portion along the side where the driveway is suggested to be put, the non-wetland area in the middle, and the wetlands on the backside of the lot. The driveway has just enough space to go along the west side of the lot without having any direct wetlands issues. Without a variance from Article 11.5.3 and Article 20.1.b of the ordinance named in this application, this lot is unusable and could potentially be more detrimental to the wetlands such as a wetlands crossing. These properties are unusable without some type of a variance for the wetlands along the front and across the back of the property. This situation was not created by Mr. Jackson.

Ms. Morin stated there is no fair and substantial relationship between the general purpose of the ordinance and its application to this property. The spirit and intent of the ordinance will be upheld by allowing this variance. Mr. Jackson will be making the best possible use of the upland that he has on the lot, there is no direct wetlands impact and is avoiding it to every extent possible, and Mr. Jackson is in compliance with all other requirements in the ordinance. Both the home and septic system, as proposed, are located as far as possible from the wetlands and avoids all impacts to the extent possible. Due to the location and extent of the wetlands Mr. Jackson will not be able to completely avoid the buffer, although it is avoided to the extent possible. A perimeter drain will be installed, as is required by DES, offering yet another level of protection which supports the intent and

purpose of the bylaw. The variance would accomplish substantial justice for the property owner, because although it reduces the number of houses he expected to be able to build, it does allow Mr. Jackson to have some reasonable use of the property. The variance does not create a disparate impact on the surrounding properties since it is not a different use, it's not commercial, and it's not increasing flow, therefore substantial justice would be served by allowing the variances.

Ms. Morin stated that allowing the variances would not cause a diminution in value of the surrounding properties. It will still be a residential use, the driveway will give it a country feel, and there are no negative environmental impacts. The State of NH supports the fact that use is consistent with other uses in the area.

Joe Nichols, Beals Associates, stated he is working with Mr. Jackson to develop the two lots of record which were received from his father. Mr. Nichols and Mr. Jackson performed a site walk and confirmed wetlands exist. Mr. Nichols had the wetlands delineated and stated the wetlands are hard to identify because they are very similar to the upland area, in that there is not a lot of vegetation difference, cattails, big ponded areas, surface water conducive to streams, channels, etc. This lot is very flat, so in order to delineate the wetlands it was based on the soils criteria (plant life, soils, and drainage). It is difficult to see the channel or an actual edge of the wetland so it was determined by soils. There is not a lot of function and value to the wetland itself and, as indicated in the 2009 evaluation of the property, the assessor also evaluated both lots and saw that there were no wetlands apparent on the properties. The average person looking at the property would not identify the properties as the traditional wetlands. This is a wet area conducive to ground water coming up through a wooded area, as opposed to a pond or creek.

Mr. Nichols stated that while the wetland was delineated, restrictions were noted immediately. Mr. Nichols explained the path of least resistance was to stay out of the wetlands. If Lot #1 was to be developed and Lot #2 was undeveloped a wetland crossing would be requested and impact the wetland itself for the upland area of Lot #1. Mr. Jackson asked Mr. Nichols about merging both lots, for tax purposes, which would result in staying out of the wetland altogether and just impact the buffer with the driveway to access the upland portion of Lot #1. The test pits for the septic were then performed and received a 50 foot setback from the state, which the septic needs. Due to this setback the house meets the town and state standards for setback from the wetland. A test pit was performed by Mike Cuomo from Rockingham County Conservation District and witness for the Town of Stratham, and the finding was a 12 inch seasonal high water table, but the town's requirement is 18 inches. The design was based on state criteria, which allows 12 inches to seasonal high water table to be built as long as it's not a wetland, poorly drained soils are allowed. The design is more stringent than the current regulations, and an enviro-septic system is used which treats the effluent a little more than the traditional stone and pipe system. The system will be raised up higher than required. The normal state standard is 48 inches for new construction, and enviro-septic is reduced down to 30 inches on this design and is allowed in the Town of Stratham. A two compartment tank is also included which allows for larger retention time, 1,600 gallons, which the requirement is 1,250 gallons at the state level. The first compartment will capture most of the solid, go through

a baffle system, then settle out in a second stage which allows for more of particles to settle out and more treatment in the system as well. The driveway was kept away from the wetland, the house was put in the most logical position away from the wetlands, and the septic meets all the criteria. The Town of Stratham allows for a conditional use permit through the planning board if the criteria is not met of 18 inches to the seasonal high water table, but due to a variance requirement needed for the setback distance Mr. Jackson would like to ask for a variance for both the buffer and seasonal high water table requirements. Mr. Cuomo stated in his letter that pre-treatment may be a good fit for this lot, Mr. Nichols disagrees in that pre-treatment has a time and place; when you are on lake-front property, when you are really close to aquifers and situations where drinking water or well locations are and you don't have treatable soil, that is when pre-treatment to introduce many nitrates into the soil is appropriate. Mr. Nichols looked at the two lots proposed to become one and these lots, DES lot loading, would actually handle 11 bedrooms, 10.8 bedrooms to be exact. This lot joined is well over the state standards for treating the effluent which will take place in a 4 bedroom residence. A pretreatment system requires ongoing maintenance, a homeowner is bound to an agreement with the company that installs the system throughout the life of the system. Also, if there is a loss of electricity, the system does not function and will not treat the effluent the way it's supposed to. With one dimensional it is supported by gravity, and with enviro-septic it receives more treatment than the traditional stone and pipe systems. Mr. Nichols explained the traditional DOD for effluent concentrate is 172 mil grams per liter, which is what comes out into the tank, and pipe and stone is 21 mil grams per liter. NH DES bases their design criteria off pipe and stone. After the enviro-septic is installed it is 2 mil grams per liter; fecal quality form is 3,091,000 per 100 milliliters coming in and stone and pipe is 190,000 per 100 milliliters and after enviro-septic it is 2,300 per 100 milliliters. TSS is 125 milliliters coming in, 25 if you use stone and pipe, and 2 milligrams per liter if using enviro-septic. Mr. Nichols showed the board the difference in the conventional septic versus enviro-septic systems.

Mr. Nichols explained the well and criteria were developed over the years and this was originally a farm field so letting it go and grow up, environment changes, houses move in and poor drainage occurred due to culverts not being maintained up and downstream from the property, which has impacted the property over the years. An erosion control berm will be put in place which is a better alternative to silt fence. It will be a mulch berm which will go around the entire job site perimeter during construction to capture any silt before it runs off into the wetland.

Mr. Dolan questioned Mr. Nichols on the original subdivision lot, which shows portion of the lot at 90 feet and the house elevation is shown at 106 feet; would the land for the house be brought up 16 feet? Mr. Nichols explained there is no knoll present, the property is flat and the elevation is roughly 99.5 feet where the house will be and the footing will be raised to approximately 105 feet. Mr. Nichols explained that assumed data was used, they did not use the data from the original subdivision data. Mr. Dolan asked Mr. Jackson when the lots came into his possession. Mr. Jackson stated his father bought the properties in the mid 1980's, through a quick-claim deed, and did not pursue developing them because he wanted to hold onto the property. Mr. Jackson explained he approached his father a few years ago about developing the property since taxes were being paid on

undeveloped property. Mr. Jackson's father then approached Mr. Terry Barnes, former Town of Stratham Building Inspector/Code Enforcement Officer, who told Mr. Jackson he could get a building permit but Mr. Jackson's father never pursued it. Mr. Jackson came into possession of the property when his father passed away in August 2016. Mr. Nichols explained the original subdivision shows no wetlands on the properties other than the drainage channel/stream in the back section. Mr. Brett asked whether there are houses on the other lots. Mr. Nichols stated that all the other lots are built, as well as a minor subdivision that occurred on Lot #9 or #10. Mr. Brett questioned whether the wetlands extend all the way down Union Road, along the front, on the other lots. Mr. Nichols explained toward the west, only the back section, the front wetland allows for a piece of land, an isolated wetland pocket, which allows for the driveway access. There is a house built on the western lot. Mr. Brett questioned Mr. Nichols on the letter to the Code Enforcement Officer dated March 7, 2017, which mentions mitigating site limitations and exceeding minimum design requirements. Mr. Nichols confirmed they are not proposing to provide a pre-treatment system, which is what Mr. Cuomo suggested, but plans to use an enviro-septic system which is more advanced over the stone and pipe system.

Mr. Caparso asked for clarification from Ms. Morin regarding Section 3, Part II, granting the variance would not be contrary to the spirit or intent of the ordinances, as it is previously approved by the town whether it is the ordinance written in 1973 or the spirit of the ordinance in 2017. Ms. Morin confirmed she understood it to be 1973, as well as keeping with the spirit and intent of the current ordinance to the extent possible given site limitations. Mr. Jackson is offering the maximum protections that are possible based on the topography and wetlands on the site. Mr. Austin reiterated supporting the 1973 and 2016 ordinance, which the 1973 spirit carries to the more confirming 2016. Mr. Brett questioned Article 20.1, variance to allow a reduction from 18 to 12 inches. Mr. Nichols explained the town requires 18 inches of natural soil, the state regulations state fill can be added, but town regulations require 18 inches of natural soil which following their intent. Mr. Charbonneau questioned Mr. Austin of Article 20.1 being a Planning Board issue. Mr. Austin explained a "Conditional Use Permit" is afforded to the Planning Board where a new subdivision may be considered and such condition exists. However, it is presented in the Zoning Regulations so the Zoning Board of Adjustment may grant a variance which meets the variance criteria. Ms. Lawrence questioned if the variance were to be denied, would the owner be legally forced from seeking a "Conditional Use Permit" from the Planning Board. Ms. Morin stated that a "Conditional Use Permit" does not address both issues. Ms. Lawrence asked for clarification regarding Article 11 and portions are encroaching on the buffer zone setbacks. Mr. Nichols explained the driveway portion would be encroaching on the 25 foot buffer in the pinch point where it is up against the lot line and the wetland. The house is outside the 25 foot buffer, however, the 50 foot setback for wetlands to a structure is not met. Mr. Austin questioned whether there is a foundation drain. Mr. Nichols explained that would fall under the town's criteria that it would require a foundation drain, the slab will be raised up to accommodate for a foundation drain. Mr. Brett asked what type of material will be used for the driveway. Mr. Nichols explained the section coming off Union Road needs to meet town criteria, 12 feet of pavement, and then transition to gravel. Mr. Jackson stated the family has paid taxes for two lots for years, that many people buy property and sit on it for years until retirement, which his father

never came to the time to have to use the property; he is not trying get something for nothing, he is actually giving up a lot and making it work to the best of his ability, which is more than what was required in 1973.

Pat Elwell, Stratham Conservation Commission, stated concern with the fact that 50 years is a lot of time and things change on parcels. Even though the property was assessed as not having wetlands on them, it is not the assessor's job to determine where wetlands exist, that it is the landowner's job. It is the responsibility of the landowner to go to the assessor and state whether wetlands exist or not. Ms. Elwell stated concern that even with the two parcels combined this is not a buildable lot for the following reasons.

--The 50 foot setback of the house from any point is not being met and the entire structure will have runoff.

--The entire driveway will run through it and will have runoff.

Ms. Elwell explained the Conservation Commission's perspective is that wetlands, regardless of what they are like, are all very important. Wetlands regenerate water into the ground water, wells run dry all the time due to droughts, so wetlands are important whether you think they are significant or not. The buffer is being impacted and setbacks exist to protect the wetlands. Once a house is built, the owners of that property will want a lawn, and we have seen this before, unless there is a strong ways of blocking them, they will continue to encroach on those wetlands and the Conservation Commission's concern is the wetlands will be overtaken. If the wetlands cannot easily be identified now, the landowner will not be able to tell the difference and it is not acceptable to allow the property on that parcel, even if you combine the two lots because it does not meet the 18 inches that is required even with the fancy enviro-septic. Ms. Elwell believes the crushed gravel driveway is ok for now, but when the landowner does not like the gravel and wants to have it paved there will be runoff into the wetlands. Ms. Elwell stated the Conservation Commission has a lot of concerns, regarding squeezing this house in a way that it has been done on these two lots; it does not belong there. Mr. Nichols stated NH DES does not have setbacks to wetlands for structures. The Town has created more stringent regulation than the state since 1973. The compacted gravel and pavement are compared as the same; it's impervious, because it gets compacted over time and doesn't offer saturation to take place over time. The septic setback criteria from DES and the town have been met. The effluent is being treated according to the setback to the wetland. As far as the separation distance, NH DES regulates that and they allow effluence treated within 12 inches of the septic system, they allow for 24 inches for replacement septic. If the septic is changed to enviro-septic advanced, it can be placed as close as 24 inches to the water table for NH DES in new construction. Mr. Nichols explained he is placing it 48 inches, which is above and beyond what the system is required from DES to treat. RCCD has had projects approved with a 12 inch water table in adjoining towns and, in Stratham, there is a lot up the street that has approval from Beals Associates with the same situation with impacts to the wetlands themselves, the system is designed to not impact the wetlands which is required by DES to mitigate the situation where there's no other alternative. The driveway is designed to be longer in order to not cut across the wetlands and avoid impacting the

wetlands themselves. The design being presented is meeting all the NH DES standards. There are different functions and values of wetlands and they are a natural resource and important to the environment, the design meets the DES standards and has minimal impact on the wetlands. The erosion control berm has been designed to help mitigate any potential damage. Mr. Nichols suggested placards be put in place so the future owner knows where the edge of the wetlands are and will not encroach on the wetlands. Mr. Jackson stated the plan is on record and shows the wetlands so it will be easy to see if the future owner encroaches on the wetlands, and agreed to put placards up if it benefits the future homeowner. Ms. Elwell stated a placard is not enough. The Conservation Commission has required fencing or boulders be installed to stop landowners from disturbing the wetlands. One placard will not stop the landowner from working their way out into the wetlands. Mr. Austin clarified for Ms. Elwell that this is a Zoning Board issue. Mr. Nichols stated there is no impact to the wetlands so the Conservation Commission does not need to be notified. Mr. Federico questioned who would notify DES if the wetlands get disturbed, it only gets noticed if someone complains which would fall on the town or the Conservation Commission to monitor the situation. Disturbing the wetlands cannot be the Town of Stratham's responsibility. Mr. Nichols stated this situation is no different than other lot in town, if someone is caught filling in or disturbing the wetlands they need to pay the penalty. Mr. Austin questioned Mr. Nichols for his professional opinion on the likelihood of a cut and fill permit being issued from DES to do two wetland crossings for two single family homes. Mr. Nichols stated if it was done for just Lot #1, it would have to be approved because access to the property cannot be denied. Lot #1 and #2 are being combined, due to availability, to be more conforming and to not impact the wetlands. Mr. Austin stated one wetland crossing could be issued and almost would be obligated by DES for Lot #1 so conceivably two houses could go on the lots. Ms. Lawrence stated the board needs to limit the review to the zoning issues, there is too much extra information that is not within the zoning board purview or is completely speculative. Mr. Austin stated the information before the board is all zoning issue, but if Lot #2 were sold DES would be obligated to grant the permission and there would be 50 foot buffer setback conflicts, lots setbacks that don't apply, etc. Mr. Austin stated the ZBA's duty is to analyze this proposal as presented. Ms. Lawrence asked for clarification that the variance before the board is an "area variance". Mr. Austin agreed.

Mr. Nichols stated the properties in question could be two 4-bedroom single family homes. Ms. Lawrence disagreed and stated there are different regulations, setbacks and density requirements. Mr. Nichols explained that it is very likely that condos could be built and increase the use of the property. Ms. Lawrence explained there are more than one regulation to be looked at that can impact any development plan. Mr. Nichols reiterated that the owner could have come in with a larger footprint and maximized the property, but chose to minimize the footprint in order to have less impact. Mr. Nichols explained the design is for a standard 4-bedroom house with minimal impact, not a duplex or anything out of the ordinary. The properties could be developed individually for more impact, but the landowner chose to combine the two properties down to one to meet the criteria. Mr. Caparso questioned whether there were multiple options on the development of the property, but the owner chose the option to combine the lots. Mr. Nichols stated yes, the option was to a) sell the lots and not develop them; and, b) develop both lots with

single family homes and go for variances for both lots. The owner chose to merge the lots into one to meet the current 2 acre lot size and have minimal impact. Ms. Elwell stated the design is non-conforming and it would not be conforming if they remained to the two lots due to 50 foot wetland and 25 foot buffer setbacks that Stratham installed. Mr. Federico stated the reason the Town of Stratham has higher standards is that Stratham is a well town with no other water supply and the reason for the stringent regulations.

Mr. Dolan asked if there was anyone who would like to speak in favor or against; no one came forward. Mr. Caparso motioned to close the public session on Case #635. Mr. Dolan seconded the motion. Motion carried unanimously.

Mr. Caparso would like to walk through the criteria for each variance and then vote, the board agreed.

Article 11.5.3 The following buffer provisions shall apply: (Rev. 3/88)

- a. No subsurface wastewater disposal system shall be constructed within 75 feet of any very poorly drained soil or 50 feet of any poorly drained soils.
- b. All construction, forestry, and agriculture activities within 100 feet of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands. The Planning Board may require an erosion control plan approved by the Rockingham County Conservation District for any project undertaken up-grade of a wetland. No building activity (building does not include septic systems) shall be permitted within 100 feet of any very poorly drained soil and within 50 feet of any wetland except as provided in subsection c of this section. Where required, permits from the New Hampshire Department of Environmental Services shall be obtained.
- c. Where an existing building within the buffer zone is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within two years of the event causing destruction. The new or rebuilt structure shall not extend further into the wetland or buffer area than the original foundation. **DOES NOT APPLY TO CASE #635**
- d. There shall be a “no-disturbance” buffer zone within twenty-five (25) feet of any wetland and fifty (50) feet of very poorly drained soils. This area will remain in its natural state and will not be subject to grading, excavation, filling or any other activity associated with the development of land.

No variance shall be granted unless all of the following conditions are met:

- i. The variance will not be contrary to the public interest.

Mr. Brett stated the reason the town has a more stringent requirement than the state is because of the Town of Stratham water situation. Ms. Lawrence agreed that the board may not be able to make a finding that it is not contrary to the public interest. Mr. Caparso stated the town has made it clear they do not want town water from Exeter. Mr. Federico stated the town does not want to pay for it. Whenever it is

brought up at the commercial district it becomes an issue so it's clear the town wants to keep the "well" nature of the town. Mr. Caparso stated the variance is contrary to the public interest. Mr. Charbonneau agreed. Mr. Austin questioned whether the wetland setbacks, depending on soil conditions and wetland existence, if it was contemplated based solely on the town's then adopted two acre minimum or if that was to contemplate smaller one acre lots. Ms. Lawrence questioned when the two acre minimum was approved; Mr. Austin stated after 1999. Mr. Federico stated the two acre was approved in 1999 and soil based went in after 1999. Mr. Federico explained the wetlands were delineated based on poorly drained soil which has only been in the last 15 years. Mr. Caparso and Ms. Lawrence explained the board must discuss the standards as of today. Mr. Dolan stated the proposal before the board would meet the two acre zoning, but would not meet the setbacks.

Further discussion ensued between Mr. Austin, Mr. Charbonneau & Ms. Lawrence regarding whether, one house on that two acre plot is "contrary to the public interest". Mr. Charbonneau confirmed "contrary to the public interest" is the impact on the wetlands and the buffers. Mr. Austin explained to the board that they could grant a variance but limit the size of the house to less than what is being proposed. Mr. Austin questioned the board on whether this proposal meets the "spirit of the public interest", while doing its best by preserving it to the greatest degree by developing it to the least degree. Ms. Lawrence is concerned that whenever a lot is developed and impacts wetlands there are impacts beyond that immediate lot. Mr. Dolan stated the house is represented to be 28x38 but the entire structure is 28x52. Mr. Nichols explained that there is a bump out, which is a family room, above the drive-under garage. Ms. Lawrence questioned whether there are other conditions that could be placed on the property to prevent subsequent purchasers from encroaching further through landscaping or other actions. Mr. Dolan suggested posting the property. Mr. Austin suggested a deed restriction or something of the sort so the owner knows the footprint.

Board Vote: AC-No; CB-No; PC-Yes; GD-Yes; DL-Yes

- ii. The spirit of the ordinance is observed.

Ms. Lawrence stated the spirit of the ordinance is observed. Mr. Dolan agreed. Mr. Brett stated the spirit of the ordinance is observed because the reason for the ordinance is the wetlands; Mr. Charbonneau agreed. Mr. Caparso stated the manner the issue was presented by counsel he was unsure which spirit of the ordinance she was presenting. Mr. Caparso explained the design is compliant with the spirit of the ordinance.

Board vote: AC-Yes; CB-Yes; PC-Yes; GD-Yes; DL-Yes

iii. Substantial justice is done.

Mr. Dolan stated that granting a variance to the setback requirements of this case substantial justice is done, the property owner is being as compliant as possible and sacrificing one lot to be as conforming as possible. Mr. Dolan said substantial justice is done in granting a variance to the setback requirements. Mr. Brett agreed. Mr. Charbonneau agreed. Mr. Caparso explained he is unsure. The applicant went out of their way to shoehorn the property the best he can, but there is a water issue in the town with many wells going dry in town last summer; who is substantial justice being done for, the applicant or the town people. Mr. Brett explained that there is a reason for more than one criteria, some of the criteria can be met, but not all, and he agrees with Mr. Dolan that this is one of criteria that the owner meets. Mr. Austin stated that it might be helpful to look at how far a structure or element is encroaching into the buffer; ex: is substantial justice done to the regulation if the owner was to stay 15 feet as opposed to 0 feet. Mr. Caparso asked for clarification that this should be looked at as how compliant the owner was to be with the project with the outlines; Mr. Austin stated that is how he understands the requirement to be. Mr. Caparso stated the owner did the best they could with what they had to work with and it is not egregious. Ms. Lawrence is voting no because she does not have enough understanding of the impacts to say substantial justice is done.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-No

iv. The values of surrounding properties are not diminished.

Mr. Caparso agreed the surrounding properties are not diminished; Mr. Brett agreed; Mr. Charbonneau agreed; Mr. Dolan agreed; Ms. Lawrence disagreed due to no evidence of what the impacts of the encroachments into the wetlands might be on abutting properties and the drainage and soil quality.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-No

v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

1. For purposes of this subparagraph, “unnecessary hardship: means that, owing to special conditions of the property that distinguish it from other properties in the area.
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and
 - b. The proposed use is a reasonable one.

Ms. Lawrence asked for clarification when considering a setback. Mr. Austin stated it should be looked at as if the proposal was for a 6-unit apartment complex in a residential/agricultural zone, that is predominately single family, and the only way to do that would be to encroach on the setback as opposed to proposing a single family in a single family zone; or is it unreasonable to put a single family home on a property that impacts that buffer. Ms. Lawrence asked for confirmation of the surrounding area and wetlands. Mr. Austin presented the tax map of the area to Ms. Lawrence which shows known mapped wetlands and conservation areas. Mr. Austin stated no wetland delineation has been done on these properties to the extent the applicant has done. Mr. Austin stated to Ms. Lawrence the map is to show the development pattern in the area, not looking at wetlands, streams, roads, etc. Mr. Charbonneau stated the board needs to look at this property as different since the surrounding properties were developed under prior standards and this property is under current standards and likely has difficulties with being developed, which distinguishes it from other lots in the area.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

2. If the criteria in subparagraph 1. Are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
3. The definition of “unnecessary hardship” set forth in this section shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Ms. Lawrence stated there was a substantial delay in the construction of these lots which is the owner’s decision and there are risks associated with that, but since that is not part of the analysis it is moot. Mr. Austin explained that if the original subdivision layout was by today’s standards it would not be considered a buildable lot, however, there is an unreasonable hardship on this lot because the lot was created before the current regulations.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

SECTION 20: Sanitary Protection & Septic Ordinance

20.1.4 All sewage disposal systems shall comply with this section of the Stratham Zoning Ordinance with the following additional requirements:

- a. Test pits and septic reserve areas. Each undeveloped lot shall have at least two (2) suitable test pits, separated by at least fifty (50) feet. All test pits necessary for satisfying local regulations shall be witnessed by the designated agent of the town. Each newly created lot shall accommodate its own sewage. For cluster developments, all sewage shall be disposed of within the boundaries of the development. **DOES NOT APPLY TO CASE #635**
- b. The town requires eighteen inches of natural permeable soil above the seasonal high water table (SHWT) beneath the sewage disposal area and sewage reserve area.

Mr. Austin confirmed for Ms. Lawrence that this request is based on the water table existing at 12 inches above the seasonal high water table. Mr. Austin stated the conversation discussed earlier regarding increasing the height by 30 inches, if the variance was granted, could be a condition of the variance. Ms. Lawrence would like to verify if a condition could be put in place regarding the applicant's disagreement with RCCD's suggestion and the pre-treatment and that it seems to be out of the jurisdiction of the ZBA. Mr. Austin stated the board could put a condition on the approval but it is usually only seen when the effluent is run into the wetland, into the ocean, into the creek, into the lake, etc. which in this case seems to be overkill when there is enough upland to treat effluent based on the states flow of number of bedrooms equals "X" number of gallons going into the ground. Mr. Austin stated there are 11 bedrooms worth of ground they are proposing for, and the encroachment is not from the leach field. Mr. Federico stated there is no effluent being put into a body of water so it does not need to be pre-treated because it is not going anywhere other than the leach field. Mr. Brett stated the 20.1.b is the only criteria that applies to this case. Mr. Charbonneau confirmed the vote for the variance will only be for 20.1.b.

No variance shall be granted unless all of the following conditions are met:

- ii. The variance will not be contrary to the public interest.

Mr. Brett does not believe it will be contrary to the public interest because the applicant, as designed, is exceeding the 18 inches; they are maintaining the distance from the water table but not using existing soil which is the reason for the variance. Mr. Charbonneau agreed. Ms. Lawrence asked for confirmation of Mr. Brett's statements. Mr. Brett stated the town is asking for 18 inches of natural permeable soil between the bottom of the leach field and the ground water and the applicant is proposing to be 30 inches and part of that is artificial fill which mitigates any environmental issues.

Board Vote: AC-Yes; CB-Yes; PC-Yes; GD-Yes; DL-Yes

- ii. The spirit of the ordinance is observed.

Board Vote: AC-Yes; CB-Yes; PC-Yes; GD-Yes; DL-Yes

- iii. Substantial justice is done.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

- iv. The values of surrounding properties are not diminished.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

- v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- 1. For purposes of this subparagraph, “unnecessary hardship: means that, owing to special conditions of the property that distinguish it from other properties in the area.

- a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and

- b. The proposed use is a reasonable one.

Ms. Lawrence asked for clarification as it is not relative to wetlands, and is relative to the water table. Mr. Austin stated what needs to be discussed is whether hitting water at 12 inches is unique to the property, the applicant can't control that. Mr. Charbonneau stated there is a fair and substantial relationship because zoning should apply to rule on which could be a hardship.

Board vote: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

- 2. If the criteria in subparagraph 1. Are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
 - 3. The definition of “unnecessary hardship” set forth in this section shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Mr. Brett stated the criteria is established. Mr. Austin stated that because it was established there is a hardship.

Final Board Vote for ZBA Case #635: AC-Yes; GD-Yes; CB-Yes; PC-Yes; DL-Yes

Mr. Dolan made a motion to **GRANT** the variance application request from Stratham's Zoning Ordinance, Article 11.5.3 requesting relief from the current 50 foot setback from wetlands and 25 foot buffer to poorly drained with conditions as follows:

1. As proposed on the application, the plot plan as submitted, there will be no alteration to the plan.

Mr. Caparso seconded the motion. Motion carried unanimously.

Mr. Dolan made a motion to **GRANT** the variance application request from Stratham's Zoning Ordinance, Article 20.1.b requesting relief to allow a reduction from the requirement of two test pits that have a minimum of 18 inches to 12 inches of natural permeable soil above the seasonal high water table beneath the sewage disposal area with conditions as follows:

1. The septic system as designed in the testimony with the enviro-septic system be installed.

Mr. Caparso seconded the motion. Motion carried unanimously.

Mr. Charbonneau explained to the applicant there is a 30-day period for any appeals so any work performed before that 30-day period the applicant is doing so at their own risk.

Mr. Charbonneau stated he will volunteer as Chairman of the Zoning Board for a period of one more year.

Mr. Caparso made a motion to adjourn at 9:10 pm. Mr. Brett seconded the motion. Motion carried unanimously.