



**Stratham Zoning Board of Adjustment
Meeting Minutes
April 12, 2016
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Arol Charbonneau, Chairman
Garrett Dolan, Full Time Member
Chris Brett, Full Time Member
Phil Caparso, Full Time Member
Deidre Lawrence, Full Time Member

Members Absent: Bruno Federico, Board of Selectman Representative
Chris Cavarretta, Full Time Member

Staff Present: Mark Morong, Code Enforcement Officer

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. March 22, 2016

Mr. Dolan made a motion to accept the minutes of March 22, 2016 as presented. Ms. Lawrence seconded the motion. Motion carried unanimously.

3) Public Hearing(s)

a. Case #629: Michelle Dunklee, 9 Linwood Lane, Stratham, NH 03885, for property located at 9 Linwood Lane, Stratham, NH, Tax Map 22 Lot 41. A Variance application request from Stratham's Zoning Ordinance, 11.5.3(b) has been filed requesting relief to construct a deck within a wetland buffer zone in which all construction activities are prohibited, continued from March 22, 2016.

Mr. Caparso motioned to accept the application. Mr. Dolan seconded the motion. Motion carried unanimously.

1 Ms. Dunklee-Stickney explained that her family are longtime residents of Stratham and
2 purchased this property, which was in foreclosure, a year and a half ago and had to make
3 several changes due to the state of the property. Last year Mr. and Mrs. Stickney applied for
4 a permit to add a deck to the back of the house and the permit was denied. Ms. Dunklee
5 stated the property is on 5 acres, 4 of which is at the back of the property, and they would like
6 safe access to the outside from the sliders leading to the back of the property. Ms. Dunklee
7 stated there are wetlands in the back of the property and they are requesting a 16' x 32' deck
8 which would encroach into the wetlands buffer. Ms. Dunklee explained there is gravel in
9 place where the deck was proposed by the former owner of the property, the deck would be
10 permeable, and would benefit the wetlands. Ms. Dunklee received letters from her neighbors
11 in favor of the construction of the deck.

12 Mr. Charbonneau questioned whether there has ever been any steps going out the sliding
13 doors. Ms. Dunklee confirmed there has never been any access out the sliders. Mr. Morong
14 stated the final checklist for the original building permit states that a deck is "not applicable"
15 but there is a 10' x 6' porch, but does not specify location. Ms. Dunklee responded there is
16 no porch, footings, or deck on the property. Mr. Brett questioned whether there are doors
17 leading to the back of the house, to which Ms. Dunklee confirmed there are two sliders which
18 are approximately 3' off the ground. Mr. Caparso asked if there are stairs leading out the
19 sliding doors, to which Ms. Dunklee stated only a make-shift set her husband built to let the
20 dogs out, which they do not use. Mr. Caparso asked for clarification regarding the size of the
21 deck. Ms. Dunklee stated the deck will be 16' wide, which will be within the wetlands
22 buffer, and 32' long, which is the length of the house. Ms. Dunklee stated the house is
23 located right on the buffer line. Mr. Brett questioned if this will be an above-ground deck.
24 Ms. Dunklee confirmed it will be an above-ground deck on posts which will access both sets
25 of sliders on either side of the house, and the reason for the 32'. Ms. Lawrence asked for
26 confirmation whether the plan submitted as part of the application was created by a wetlands
27 scientist. Ms. Dunklee confirmed. Mr. Charbonneau stated there are different soil
28 classification to determine wetlands and the soils shown are poorly drained which is reason
29 for the buffer. Ms. Lawrence asked for clarification that the deck would encroach 16' into
30 the wetlands buffer, Ms. Dunklee agreed. Mr. Charbonneau questioned whether the wetlands
31 abut neighborhood property or just the property at 9 Linwood Lane. Ms. Dunklee stated the
32 neighbor has a deck that encompasses their full back yard, which she believes is where the
33 builder placed the house which has 5+ acres. Ms. Lawrence asked for clarification of the
34 actual deck construction and if there will be gravel underneath the deck. Ms. Dunklee stated
35 it will be raised 3' above the ground and include the bluestone that currently exists. Ms.
36 Lawrence asked for an explanation of the meaning of a permeable deck. Ms. Dunklee stated
37 her understanding is that water will go through the deck, gradually, as opposed to having it
38 runoff.

39 Mr. Charbonneau questioned why the tax card states there is an existing deck. Ms. Dunklee
40 stated it is a granite step and a deck does not exist. Ms. Lawrence and Mr. Dolan asked for
41 clarification of when the building permit was denied, to which Ms. Dunklee stated spring of

1 2015. Mr. Dolan questioned the letter from the building inspector that stated the rear egress
2 issues had been addressed. Mr. Morong clarified the building code requires one means of
3 egress through the front door. In this case, a set of stairs or 6' guard would be required
4 across the 6' slider in order to receive a Certificate of Occupancy. Mr. Dolan stated that it
5 was noted in the original building permit that the egress was an issue. Ms. Dunklee and the
6 board reviewed the drawing to understand where the deck would be located. Mr. Morong
7 stated the builder submitted 3-12" sonotubes down to frost 4' supporting this deck, and
8 submitted a 4'x4' landing with stairs and on the other end of the deck and 8'x8' area which is
9 also within the wetlands setback. Mr. Brett questioned Mr. Morong on the distance from the
10 house, per code, does a landing need to be out a door. Mr. Morong stated you are not required
11 to have a landing, you could have stairs that lead out the sliders. Mr. Morong stated a set of
12 stairs would encroach on the wetlands a minimum of 4'-5' by 3' wide. Ms. Dunklee
13 confirmed the door is a swing door and screen not an actual slider. Mr. Caparso asked Mr.
14 Morong what the minimum width on a patio or landing is per code. Mr. Morong stated 3'.

15 Mr. Dolan moved to close the public session. Ms. Lawrence seconded the motion. Motional
16 carried unanimously.

17 Mr. Brett stated Ms. Dunklee should have access to the back of the house and a set of stairs
18 would be a violation. Mr. Charbonneau explained a set of stairs would be less of an
19 encroachment. Mr. Brett and Mr. Caparso stated a deck of 3' out and the length of the house
20 be built with a bigger deck on the side of the house. Mr. Morong recommended it be built
21 the width of the door. Ms. Dunklee explained that there is a very large drop off where Mr.
22 Brett and Mr. Caparso are suggesting the deck go, which will make the deck 2 floors high as
23 opposed to 3' off the ground.

24 The board discussed the Variance Criteria. No variance shall be granted unless all of the
25 following conditions are met. Mr. Charbonneau stated the basic objective is to protect the
26 wetlands and water sources. Ms. Lawrence stated Zoning Ordinance 11.1 breaks down the
27 criteria. Mr. Charbonneau stated the board needs to take into consideration whether there is
28 anything unusual about this plot of land that allows the board to grant relief. Mr.
29 Charbonneau and Ms. Lawrence agreed that it applies to all 5 of the criteria listed in 11.1.
30 Mr. Caparso stated the variance is not contrary to the public interest because there is no
31 development on the wetlands but on the buffer and will not destroy the wetlands or add to the
32 flooding; and it doesn't do anything not to preserve the wetlands. Mr. Charbonneau
33 explained it is contrary to a degree because the buffer is in place to preserve the wetlands.
34 Ms. Lawrence agreed with Mr. Charbonneau and stated there is no evidence that shows a
35 difference in the deck that would not have some long term impact on the wetlands. Mr.
36 Caparso stated the impact will be minimal. Ms. Dunklee explained a permeable deck allows
37 the water to gradually drain. Ms. Lawrence is concerned with the deck material containing
38 chemicals. Mr. Dolan would like documentation that the deck would not have an impact on
39 the buffer zone. The buffer zone was created to protect the wetlands and Mr. Dolan stated
40 that Ms. Dunklee has not presented the board with information that supports there will be no

1 detrimental impact to the buffer zone. Mr. Dolan asked for a statement from a wetlands
2 expert stating the impact or lack of impact on the buffer zone from the construction of a deck,
3 as well as construction documents including materials that will be used to construct the deck.
4 The board agreed a site walk would not be beneficial and a wetlands expert information
5 would be more beneficial.

6 Mr. Dolan made a motion to continue the hearing of Case #629 to May 24, 2016 pending
7 receipt of information from a wetlands expert supplied by the applicant, as well as supporting
8 documents of the building plans and materials. Ms. Lawrence suggested to the applicant that
9 having the wetlands expert at the next hearing would allow the board to ask questions and
10 receive the information directly from an expert, but it is not mandatory. Mr. Caparso
11 seconded the motion. Motion carried unanimously.

- 12 b. **Case #630: Peter & Susan Hazo, 12 Evergreen Way, Stratham, NH 03885, for property**
13 **located at 12 Evergreen Way, Stratham, NH, Tax Map 12 Lot 92.** A Variance application
14 request from Stratham's Zoning Ordinance, Section 4.2 Table of Dimensional Requirements,
15 has been filed requesting relief to construct an 8' fence, defined as a structure in Section
16 2.1.66, within the 20' side yard setback, as well as relief from the Stratham Building Code
17 Article 8.3.3 Height: Fences and walls shall not exceed six (6) feet in height.

18 Mr. Caparso made a motion to accept application #630. Ms. Lawrence seconded the motion.
19 Motion carried unanimously.

20 Mr. Peter Hazo introduced himself, his wife Susan and daughter. Mr. Hazo explained that
21 due to the nature of the road the abutter's home sits behind their property, and with the
22 sloping of the yard they would like to install an 8' fence for privacy because a 6' fence does
23 not provide the privacy they are seeking. The abutters at 8 Evergreen Way have agreed with
24 Mr. Hazo that an 8' fence would benefit their privacy as well. Mr. Hazo showed the board
25 pictures to explain the situation. Ms. Lawrence questioned whether a permit was applied for.
26 Mr. Hazo explained he spoke with the building department twice and found out about the 8'
27 limit before he applied for a permit. Ms. Lawrence asked for clarification whether this was a
28 building department or zoning board decision. Mr. Morong stated the permit was denied and
29 pointed out articles which verify the zoning board must decide whether the fence can be built
30 within the setback. Discussion ensued that a 6' fence is not considered a structure and an 8'
31 fence is considered a structure which then becomes a decision to construct within the 20'
32 setback. Mr. Caparso would like verification in writing from the abutter that they are in
33 agreement with the 8' fence.

34 Mr. Caparso made a motion to close the public session. Mr. Brett seconded the motion.
35 Motion carried unanimously.

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

37 Mr. Brett and Mr. Caparso stated a letter from the abutter would be a requirement to not
38 be contrary to the public interest. The board unanimously agreed the variance is not
39 contrary to the public interest.

1 ii. The spirit of the ordinance is observed.

2 The board unanimously agreed the spirit of the ordinance is observed.

3 iii. Substantial justice is done.

4 Mr. Dolan stated substantial justice is done pending letter from the abutter. The board
5 unanimously agreed

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

7 Ms. Lawrence stated, pending letter from abutter, the privacy will improve the value for
8 both properties. The board unanimously agreed.

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

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

13 a. No fair and substantial relationship exists between the general public purposes of
14 the ordinance provision and the specific application of that provision to the
15 property; and

16 b. The proposed use is a reasonable one.

17 The board unanimously agreed the applicant has satisfied the criteria for unnecessary
18 hardship.

19 Ms. Lawrence made a motion that application #630 be corrected to reflect; a variance is
20 sought from Section 4.2 of the Zoning Ordinance, Dimensional Requirements, and the
21 minimum side yard setback for Residential/Agricultural District of 20’, due to the fact that
22 the fence to be constructed would be 8’ in height and is, therefore, considered a structure
23 under Section 2.1.66 of the zoning ordinance and a variance be granted from Section 4.2
24 subject to the condition that a letter in support of the application be submitted by the abutter
25 to the Zoning Board of Adjustment within 10 calendar days of 4/12/2016. Mr. Dolan
26 seconded the motion. Motion carried unanimously. Mr. Charbonneau explained to the
27 applicant they have 30 days from today before they can construct the fence, for abutters to
28 appeal the decision.

29 c. **Case #631: William Bedingfield. 70 College Road, Stratham, NH 03885, for property**
30 **located at 70 College Road, Stratham, NH, 03885, Tax Map 20 Lot 19.** A Variance
31 regarding the terms provided in Section 12, Article 12.6.4 requesting relief to construct a
32 patio within the Shoreland Protection District.

1 Mr. Dolan motioned to accept the application for Case #631. Mr. Brett seconded the motion.
2 Motion carried unanimously.

3 Mr. Bedingfield introduced himself to the board and explained that an addition of a screen
4 porch was constructed in 2001 and at that time a Variance from Article 12.6.4, Section 12,
5 was granted with the condition “That nothing be built there at any point in time except for the
6 deck and screen porch.” Mr. Bedingfield stated at the time he did not think it was literal. Mr.
7 Bedingfield had conversations Mr. Barnes, former building inspector for the town, who was
8 adamant that the town did not want the deck to become any larger than it was because of the
9 encroachment of 1.5’ into the 150’ Shoreline Protection setback, which Mr. Bedingfield was
10 in agreement. Mr. Bedingfield stated he would like the board to rule on the prior condition
11 granted with the approved variance or approve a variance to construct the patio. Mr. Morong
12 stated that each town is different and a patio may or may not be considered a structure
13 whether they are in or on the ground, the digging of soil and changing of water flow, etc. and
14 Mr. Morong would like the ZBA to make the determination. Mr. Dolan asked for
15 clarification on the plan of the 150’ setback. Mr. Wiggin explained the plan to the board and
16 verified where the wetlands setback is. Mr. Wiggin showed the highest observable tide. Mr.
17 Wiggin stated the intent is to submit to the Conservation Commission for their approval and
18 then submit for the State of NH for a permit due to encroaching on the setback, which the
19 state will not approve without the Conservation Commission’s approval. Mr. Wiggin showed
20 the patio on the plan as being 85’ from the highest observable tide. Mr. Wiggin stated he
21 believes state regulations are 100’. Ms. Lawrence stated the town regulations are 150’. Mr.
22 Charbonneau questioned if the 150’ applies or is it 75’ of buffer of natural vegetation along
23 the Squamscott River. Mr. Wiggin stated the submittal is for a wetlands permit which is 100’
24 due to it being a salt water body, and at the state level it would an expedited minimum impact
25 permit. Ms. Lawrence stated the permitted uses in a shoreline district is one that “does not
26 involve the erection of a structure” and “does not alter the surface configuration by the
27 addition of fill or by dredging”. Mr. Charbonneau stated his understanding that the 75’
28 applies if it’s not a structure and Ms. Lawrence stated she does not believe it is a structure.
29 Mr. Wiggin explained the construction of the permeable pavers. Mr. Dolan read 12.6.4,
30 Special Exception For Lots of Record. Ms. Lawrence, Mr. Charbonneau, Mr. Caparso stated
31 they do not believe this is a structure and is not subject to zoning, but the applicant has other
32 environmental requirements that will have to be complied with.

33 Ms. Lawrence made a motion to close the public session on Case #631. Mr. Caparso seconds
34 the motion. Motion carried unanimously.

35 Mr. Caparso made a motion to deny the application for variance of Case #631 on the basis
36 that the patio, as designed and presented to the board, does not appear to be a structure and is
37 outside the ZBA jurisdiction to require a variance. Ms. Lawrence seconded the motion.
38 Motion carried unanimously.

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