



Minutes

NORTH HAMPTON PLANNING BOARD Meeting: June 3, 2003

Page 1 of 8

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.

Attendance

Present: (1) Phil Wilson, Chair; (2) Ron Todd, Vice-Chair, (3) Allen Hines, Selectman, (4) Judy Day, (5) Shep Kroner (6) Joseph Arena (7) Richard Place seated originally for Joseph Arena and then for Don Gould.

Absent: Don Gould, Beth Church

In attendance: John Krebs, Circuit Rider; Krystina Deren Arrain, Recording Secretary

Present, not Seated: None

Mr. Todd explained that Mr. Wilson was expected to arrive later and as Vice-Chair, he would assume the Chair. Mr. Todd called the meeting to order at 7:05 PM.

Items Considered

Case #03-27 -- Map/Lot #003-099-000: 22 Lafayette Road

Applicant: 22 Lafayette Road LLC, P.O. Box 265, Hampton, NH 03843-0265

Application: Site Plan Review for Addition of a Lube Center

Mr. Todd explained that John Krebs/RPC, Ed Kelly/KNA, the Town Engineer and the Application Review Committee/ARC had reviewed the application. Questions and comments arising from these reviews were provided to the applicant.

Mr. George Chobanian, Project Engineer, Civil Consultants, representing the applicant, explained that prior to 1977, a body shop was operated on the site. The current lot was originally two lots and merged into the one lot comprising 85,450 square feet [1.45 acres]. A carwash facility on site was added at a later date. On January 8, 2002, the Planning Board approved an addition to the body shop building along with other improvements on the site. Mr. Chobanian noted that the site had recently received a landscaping award.

Mr. Chobanian stated that the applicant's intent is to remove the addition which houses an office and detail center, pave the area and construct a 16,050 square foot building for a lube center. With this removal, re-paving, landscaping and construction, the total amount of impervious surface would be decreased. He added that there would be adequate circulation/traffic flow area. The proposed building is very similar a building located at their Newmarket, NH facility.

Dr. Arena was seated at 7:40 PM

Mr. Todd commented that the Board would address the review comments raised by the ARC, John Krebs and Ed Kelly.

Proximity of Planned Facility to Aquifer Recharge Area

Mr. Todd expressed concern that the proposed facility is either located on or close to the primary aquifer recharge area noting that the aquifer must be protected. He also noted that the applicant would need to secure a conditional use permit as well as a variance. Mr. Chobanian explained that he included a USGS Location Plan in their application that indicated the applicant's site is 3,500 feet [2/3 mile] from wetlands. Mr. Krebs explained that he located at the RPC, and aquifer and well map that clearly illustrated that the site is located in the primary aquifer area. He questioned whether the proposed use is either (1) prohibited, (2) conditional or (3) allowed. In his opinion, Mr. Krebs stated the use is "conditional" and as such, it required a conditional use permit. He further explained that a conditional use permit is a zoning permit that is allowed by the Planning Board. He referenced Zoning Ordinance -Article IV, Section 414.3(c).

Mr. Todd inquired if the applicant needed both a Special Exception and a Conditional Use Permit. Mr. Krebs stated that he believed only a Conditional Use Permit was required, but indicated it would be a Board decision if they determined the applicant's lube center would be categorized as a "service station." Mr. Chobanian stated that oil products will be stored and contained inside the building within a concrete structure and used oil products will be removed on a regular basis by an oil-recycling provider. The facility would not store large quantities of oil products on site.

Mr. Hines inquired if a protective membrane could be placed below the structure for added protection against oil leakage. Mr. Chobanian commented that there are products and methods to prevent leakage and that there are no drains/drainage that would cause leakage into the aquifer area. Mr. Chobanian stated the DES limits oil storage to 660 gallons on site. He added that storage tanks are outfitted with containment devices to prevent accidents or leakage. Mr. Chobanian assured the Board that the latest containment technology would be employed on this site as well as adherence to all legal storage requirements.

Dr. Arena expressed concern about potential leakage when using the sump pump. Brian Messina, General Manager, ProWash Car Wash LLC, stated that the sump pump is intended for emergency use only. Mr. Krebs doubted that the DES would approve the sump pump use.

Mr. Todd asked for an improved location plan. Mr. Krebs noted that an improved plan was unnecessary; rather, the Board needs to verify if the site is located on the aquifer. He further

added that the Board should determine if a conditional use permit is appropriate and then act upon it. Mr. Kroner asked Mr. Krebs if Blake Chevrolet is considered a service station. Mr. Krebs thought the Blake facility was more specialized and would not be considered a service station. Dr. Arena emphasized his concern that the proposed facility uses a large volume of petrochemicals and, in his opinion, the chance of pollution from leakage into the aquifer is high.

Mr. Chobanian asked for a continuance of the application. Mr. Krebs explained that the Board has a policy that prohibits a continuance when an application is incomplete. Mr. Chobanian expressed concern that he was unclear how the applicant should proceed. Mr. Todd asked the Board if they should review the application for future consideration providing the applicant with some direction for a future application. Mr. Krebs stated that the applicant should communicate directly with him and the Town Engineer.

Ms. Day voiced her opinion that the Board should discuss the ARC comments. Mr. Todd stated that the site is non-conforming because it is located within the 35-foot side setback and within the 10-foot landscape buffer. Mr. Krebs disagreed with Mr. Todd stating that non-conformity is comprised of three (3) classifications: (a) non-conforming lots, (b) non-conforming uses and (c) non-conforming structures. Mr. Krebs explained the definitions of each condition and re-emphasized his opinion that applying "non-conformity" to the site was incorrect. Mr. Todd added further comments to support his position that the site is non-conforming. At the end of this discussion, Mr. Krebs stated he would contact Peter Loughlin, [author of Land Use Planning and Zoning] for clarification on non-conformity of dimensional requirements. He added that he would share Mr. Loughlin's response with the Board.

Ms. Day moved, and Mr. Hines seconded the motion, to deny the application as incomplete because the applicant must secure a Special Exception from the Zoning Board of Adjustment to operate a lube center (service station) in the Industrial-Business/Residential zone district.

Mr. Todd stated that the Board should identify to the applicant, why the application is incomplete. Mr. Krebs commented that it is the responsibility of the applicant to submit a completed application.

The Vote was unanimous (6-0).

Mr. Chobanian asked for the Board to proceed at this time with a pre-application review. Mr. Todd stated that a pre-application review for this applicant had not been properly noticed and as such, the Board could not act upon his request. Mr. Krebs suggested to Mr. Chobanian that the applicant follow-up and answer the review comments from the ARC, Town Engineer and him before they re-submit another application.

Case #03-28 -- Map/Lot #007-062-000: 57 Lafayette Road/Route 1

Applicant: D & E Realty LLC, 57 Lafayette Road, North Hampton, NH 03862

Application: Change of Use Application from use as a Wholesale Business Office to an Acupuncture Practice/Office Space.

David Hartnett, D&E Realty LLC, explained to the Board that he wanted to rent 400 sq. feet of vacant office space on the second floor of his facility to an acupuncturist. He was unclear why the Building Inspector determined he had to come before the Board for a change of use request. Mr. Hartnett commented that there is not a use change; it is and would remain office space. He noted that there is ample parking on the location.

Sheryl Wookey, 3 Hedman Avenue, Hampton, NH, NH Licensed Acupuncturist #076 addressed the Board that handicap access and parking was not an issue, because she would not schedule handicap patients at the site, she would go to their residence. In addressing the layout of her practice, Ms. Wookey stated that since she is just beginning her practice, she would schedule only one client at a time. The space would be used for client sessions and Ms. Wookey planned on locating a desk in the corner nook.

**Ms. Day moved, and Mr. Hines seconded, to approve the application.
The Vote was 5-0, Dr. Arena abstained.**

The meeting recessed at 8:40 PM
The meeting reconvened at 8:45 PM

Mr. Wilson assumed the Chair.

Update from John Krebs/RPC for Funding Availability

Mr. Krebs addressed the Board stating that funds are available for the Planning Board to use in administrative services for possibly the CIP and Master Plan Update. Mr. Wilson indicated that Michael Pardue, Town Administrator, had assumed responsibility for providing administrative support for updating the CIP. Mr. Krebs stated that \$1,500. is available to the Board and he suggested that the Town Administrator contract with the RPC for an access management study. He cautioned that these funds are only available until June 30, 2003. Additionally, Mr. Krebs noted that funding is available from the NH Coastal Zone Program and the Board should consider applying next year for funding for other projects from this source.

Mr. Wilson commented that the site plan review regulations should address access management. In addition, he added that noise, lighting and signage need attention. Mr. Wilson commented that Ms. Day has investigated information on signage. He noted that the Board is unfamiliar with the access management issue and would appreciate Mr. Krebs' input in establishing baseline knowledge of access management.

Mr. Kroner commented that he is interested in source water protection. He asked if Mr. Krebs had any knowledge of a Vermont non-profit, called Northeast Rural Waters. Mr. Krebs responded that he did not and suggested that Mr. Kroner contact the RPC directly. Mr. Wilson suggested that Mr. Krebs draft a report on access management regulations to be incorporated

into the site plan regulations. There was a consensus of the Board for Mr. Krebs to act on Mr. Wilson's suggestion.

Proposed Additions to Site Plan Review Regulation List of Definitions [Regarding "Sight Triangle" and "Greenspace."]

Mr. Wilson stated that before the Board can act on adoption of the sight triangle definition a public notice must be posted and a public hearing must be held. He noted that the greenspace definition was adopted on April 21, 2003 and did not require any further action.

Dr. Arena moved, and Mr. Todd seconded the motion to include the "Sight Triangle" definition for adoption at the next Public Hearing.

The Board approved the motion by unanimous vote (7-0).

Renumbering of Section X.D. (Landscaping and Screening) of Site Plan Review Regulations.

Mr. Wilson explained that a numbering error on the adopted Greenspace, Landscaping and As-Built amendments was discovered. He and Ms. Arrain determined the correct numbering sequence and submitted the corrected versions for Board members to sign at this time. The documents were distributed for Board members signatures. Upon signature they would be delivered to the Town Clerk for certification as approved amendments to the Site Plan Review Regulations.

Request to Waive Review Fee for Stephen and Nancy Wood [Willow Avenue & Chapel Road] Subdivision Re-Application for July 2003 Agenda.

Mr. Wilson commented that the original Wood application failed because they had not secured Little Boar's Head Planning Board/LBH-PB approval and had not met the required frontage. During the May 6, 2003 meeting, discussion ensued about the political interaction/requirements of the LBH-PB and the North Hampton Planning Board. As a result, Mr. Wilson contacted the NHMA for an opinion but had not received a response to date.

Mr. Wilson noted the Woods' application was denied as incomplete. The applicant indicated they would change the frontage to meet the requirement and then reapply after they received LBH-PB approval. Dr. Arena maintained that there is only one Planning Board for the Town of North Hampton.

Ms. Day moved, and Dr. Arena seconded the motion to waive application fees with the exception of the abutters' fees.

Mr. Krebs commented that the town staff, town engineer and he had spent many hours processing the application and he felt the applicant should bear the responsibility and cost for filing a complete application. Mr. Wilson added that, in defense of the applicant, the applicant had been provided misinformation from the LBH-PB and the review of the re-submitted application should involve minimum time and effort. For these reasons, he felt waiving the fees was appropriate.

Request for Clarification of Application Submission Process by Krystina Arrain, Planning & Zoning Administrator

Ms. Arrain asked the Board for guidance on how to better expedite the application process. Discussion ensued on the subject, but Mr. Wilson noted that this item was not on the agenda and should not be discussed at this time because no action could be taken to change the Board's Rules of Procedure without proper notice of a public hearing on proposed changes. He suggested that this item be placed on a work session agenda.

Nomination of Representative to Route 1 Study Committee

Mr. Wilson opened nominations stating that he hoped a Planning Board member would volunteer for the nomination. He added that the Board of Selectmen is not required to act on the nomination, as was the case for RPC commissioner.

Dr. Arena questioned the purpose of the RPC study. Mr. Wilson noted that the RPC would collect information and create a report that is intended to assist North Hampton in its planning decisions regarding Route 1. He further noted that study participant would bring the Town's interests and perspective to the RPC Route 1 study committee.

Dr. Arena moved the motion to get feedback from the State before the Board nominates a representative. The motion was not seconded and was removed.

Ms. Day nominated Mr. Wilson.

Mr. Hines nominated Charles Gordon.

**For Mr. Wilson, the Board voted 6-0 with Mr. Hines abstaining
Mr. Wilson was nominated.**

Discussion of Policy Restricting Access to New Hampshire Municipal Association/NHMA Services

Mr. Wilson stated that he had not realized how much the Board relied on the NHMA service and wanted easier access to free legal advice. He outlined that the Board had restricted access to the NHMA. Mr. Wilson outlined the current process: (1) An inquiry for information is submitted to the Town Administrator, (2) the Administrator reviews the inquiry and forwards it to the NHMA, (3) the Administrator forwards the response to the Board. He added that the current process is very time-consuming and inefficient and wondered why the Board of Selectmen implemented the very restrictive process.

Mr. Hines responded with the following comments:

- (a) The municipality, Town of North Hampton, is the NHMA client and as such, the Board of Selectmen can implement rules of access and an access procedure.
- (b) Unauthorized inquiries from a private citizen had been directed to the NHMA. As a result, NHMA response had been used against the municipality's interest. Mr. Hines cited Laurel Pohl as the private citizen who had been given unauthorized access and stated that Selectwoman Jenifer Landman and Planning Board member Judy Day had improperly given Ms. Pohl access to privileged information provided by the NHMA.

- (c) The Board of Selectmen does not want the NHMA to be used as legal advisors. The Town does have legal counseling services available.
- (d) Planning Board members have been “pestering” the NHMA.

Discussion ensued among Board members voicing the opinion that the restricted access to the NHMA greatly impedes the Board’s ability to receive pertinent information needed by the Board to make appropriate and legal decisions. Numerous Board members expressed frustration at the restricted access, stating the Board was being “gagged.” Mr. Todd suggested formulating a letter to the Board of Selectmen that addressed the impact of their decision and requesting unrestricted access to the NHMA.

Mr. Wilson asked Mr. Hines whether the NHMA had lodged any complaints about Planning Board members’ “pestering” NHMA staff attorneys. Mr. Hines replied that “no, it was his opinion” that Planning Board members were pestering the NHMA with questions that should be directed to the Town’s attorney.

Mr. Wilson questioned whether that was prudent in view of the facts that NHMA advice was covered under a fixed fee arrangement and Mr. Ryan’s services were billed case-by-case.

Mr. Hines left the meeting at 10:10 PM during the discussion.

Mr. Kroner noted that many RPC members had commented that they never heard of such a restriction. Mr. Place added that the Board needed an escalation process for answering legal questions. Dr. Arena added that because of the current procedure, it would cost the Town additional money for legal counsel fees. Mr. Wilson commented that only the Board of Selectmen has authority to enter into a contract on behalf of the Town of North Hampton with the NHMA and as such they are authorized to establish a process they choose, regardless of its cost to the Town, its affect on the Planning Board’s efficiency of operation or its affect on legal propriety in actions taken by the Planning Board.

Ms. Day and Mr. Todd volunteered to draft a letter to the Board of Selectmen addressing the restricted NHMA access and would request for rescinding the policy.

Update on Senate Bill #70 (SB 70) Commission to Study Implementing NH Estuaries Management Plan

Mr. Kroner stated that this bill is a study that would investigate the need for a water treatment facility for the entire seacoast region. The bill passed with amendments and the RPC and Stafford Regional Planning Commission/SRPC support the study, which is not to infer that they support building a water treatment facility. Mr. Kroner added that this study/issue would involve many years of consideration and debate. He stated that a primary focus of the study involves investigating a solution for the City of Rochester’s water treatment problems.

Update on Senate Bill #95 (SB 95) Workforce Housing Recommendation

Mr. Kroner stated that this bill has passed the Senate and would provide applicants an easier remedy through the NH Superior Court if Planning Boards restrict workforce housing. Workforce housing is defined as housing for a 4-member family with an income that is 80% of the median income of the county or local area.

At 10:35 PM, Dr. Arena moved, and Mr. Todd seconded the motion, to adjourn.

The Board approved the motion by unanimous vote (6-0).

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary