



## **Minutes**

### **NORTH HAMPTON PLANNING BOARD Meeting: July 1, 2003**

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*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 for Don Gould.

**Absent:** Don Gould, Beth Church

**In attendance:** John Krebs, Circuit Rider; Krystina Deren Arrain, Recording Secretary/Planning & Zoning Administrator

**Present, not Seated:** None

Mr. Wilson called the meeting to order at 7:02 PM

### **Items Considered**

**Case #03-29 -- Map/Lot #001-136-000 and #005-027-000: Northwest Corner of Willow Avenue and Chapel Road**

**Applicant:** Stephen and Nancy Wood, 277 Gulf Road, Dover, NH 03820

**Application:** Request for Subdivision/Lot-Line Adjustment

Dan Jendrick, Holden Engineering, representing the applicants, began his presentation by providing an overview of the subdivision plan. He explained that at the May 2003 meeting, the applicants had been denied because their plan did not meet frontage requirements nor had they received Little Boars' Head Planning Board approval. Since the May meeting the applicants received state subdivision approval.

Mr. Todd commented that the Application Review Committee (ARC) had reviewed the new application and determined that the issues raised previously by the ARC had been satisfactorily addressed. He asked for more information about the restoration plan and the applicant clarified that the plan would affect these lots. John Krebs/RPC noted that the applicant also needs to provide (a) Certificate of Monumentation, (b) DES subdivision approval and (c) Professional stamps from surveyor and wetland scientist affixed on recordable mylar plan.

**Mr. Hines moved, and Ms. Day seconded the motion, to accept the application as complete. The Board approved the motion by unanimous vote (7-0).**

**Mr. Todd moved and Ms. Day seconded the motion to conditionally approve the subdivision request with the following conditions:**

- (a) Certificate of Monumentation. The applicant shall provide the Board with a Certificate of Monumentation, stamped and signed by a NH LLS certifying that all monuments depicted on the plan have been properly set.**
- (b) Wetland Scientist and Surveyor seals affixed on recordable mylar plan**
- (c) Woodrail fence reference removed from plan**
- (d) Correct misspelling of Chapel Road on plan**

Mr. Wilson referenced Item #14 from Mr. Lovell's letter that noted "there would be less than 3% runoff." He asked Mr. Jendrick to explain Mr. Lovell's statement. Mr. Jendrick responded that the 3% runoff figure is a minimal change and should not be of any concern. Mr. Krebs was not concerned about that amount of additional runoff, but noted that he had not read Mr. Lovell's comment.

Deborah Gelston, 20 Chapel Road, an abutter, asked how the runoff issue could affect her property. Mr. Jendrick restated that the runoff calculations submitted were not cause for any concern because 3% was such a minimal change. Ms. Gelston asked for an explanation of the front yard and frontage requirements as applied to the subject property that Mr. Krebs provided.

Susan Spencer, 4 Chapel Road, stated that she did not support the subdivision request as submitted because it changed a rectangular lot and turned into two long, narrow "bowling alley-shaped" lots. She added that although this subdivision request conforms to the zoning ordinance, it is not what she thought was the intent of the 2-acre zoning. The two proposed lots are not aesthetically pleasing. Mrs. Spencer commented that the proposed lots will congest the area with two additional "very likely, large" houses.

Joan Lamprey, 16 Atlantic Avenue commented that the Willow/Chapel Road area is a charming area of the town and it would be a shame to subdivide the lots in such a manner. Larry Miller, 141 Mill Road, commented that the proposed lots would become ideal locations for two mobile homes. Dr. Arena asked if there is a way to square off these lots, rather than creating the two elongated lots as proposed. Mr. Jendrick indicated that during the barn restoration, Mr. Wood investigated that option and found that because of the frontage, setback, septic and well requirements, squaring off the lots was not an option.

Mr. Guil Spencer, 4 Chapel Road commented that he is very concerned that the property owner is motivated by a large profit as the basis for this subdivision scheme. Mr. Hines responded that there was nothing wrong with Mr. Wood wanting to make a profit from the sale of the proposed lots. He added that the applicant had met the legal subdivision requirements and he doubted if the Board could deny the applicant's request. Dr. Arena requested that the Board review the possibility to square off the lots. Discussion ensued among Board members and Mr. Jendrick on possible options to square off the lots. Mr. Wilson noted that upon considering possibilities, he realized the difficulty in squaring off the subject parcel into two lots.

Mr. Stuart Scharff, 12 Willow Avenue, commented that as an abutter he has no objections because the proposed plan complies with all requirements.

Mr. Todd questioned whether there is a letter in the file authorizing Mr. Jendrick to represent the owner. Mr. Jendrick responded that in the prior subdivision submission, Rusty Lovell, had represented the owners, but was unavailable for this hearing.

Mr. Todd asked if the well radii could be built upon. Mr. Krebs indicated that it could, but added that the property owner could subdivide their land as they desire. He further added that the Board does not have any basis for denial. Ms. Day commented that regardless of personal feelings, the owner has met the requirements and she must uphold the law. Mr. Wilson noted that the Board has to do what is just and abide by the law. Mr. Kroner agreed with Mr. Wilson's statement.

**The vote was 6-1 with Dr. Arena dissenting.**

**Case #03-30 -- Map/Lot #007-148-000: 229 Atlantic Avenue**

**Applicant:** Joseph Kutt, P.O. Box 295, North Hampton, NH 03862-0295

**Application:** Request for Site Plan Review for addition to Joe's Meat Shoppe

Joe Kutt began his presentation by stating that the proposed addition will provide the following benefits/improvements:

- a) Improve traffic flow within the store
- b) Relocate the cooler into the addition
- c) Increase the space in the food preparation area for employees
- d) Increase the space in the 12-space seating/eating area
- e) Provide handicap ramp/access for patrons

Mr. Kutt explained that he received the requisite variances from the Zoning Board of Adjustment (ZBA) on June 18, 2003 for setback and the expansion of a non-conforming use. He noted that the addition is much needed and will be very attractive, adding to the functionality and appearance of the current structure. Mr. Kutt commented that he shared much of the use of his land with the Town for parking and during the winter the sand trucks are heard all winter.

Mr. Kutt responded to the comments/issues raised by the ARC and Ed Kelly, the Town Engineer. He commented that there would not be increased vehicular traffic because of the addition. The purpose of the proposed addition is to relieve congestion within the store. Mr. Kutt questioned the Board's assumption that additional parking is required. Mr. Todd stated that the applicant could request a waiver for the parking requirements. The Board suggested that the applicant's engineer recalculate the parking requirement allowing for retail, takeout and restaurant usage. Mr. Todd further explained to Mr. Kutt that the site review process does not look only at the addition, but rather, that it considers the entire site and the parking calculations should be detailed on the plan.

Mr. Hines commented that he frequents Joe's Meat Shoppe often and has never encountered a problem with parking and seating. He added that the addition is an improvement to the current condition noting that it is an existing structure, dating back to 1907. Mr. Hines stated that the Board cannot make the structure fit into the current ordinance and it would be a travesty if the Board did not allow him to build the addition.

Mr. Todd explained that the applicant securing waivers would not be a problem; it would just require the appropriate application processing. He added that the applicant's proposal has much merit and Mr. Kutt's business is firmly supported by the town and he does not perceive any insurmountable issues.

During discussion of the septic system capacity and capability, Mr. Krebs suggested that Mr. Kutt receive, in writing from the DES, a letter stating that the 1995 approved septic plan is adequate to meet his business' need with the proposed addition. Mr. Krebs also re-emphasized to Mr. Kutt, the importance of acquiring updated DES approval for his septic system.

Mr. Wilson commented that it would be difficult to accept the plan as complete because the Board required (1) updated parking calculations, (2) landscaping waiver, (3) lighting waiver, (4) drainage study waiver, (5) parking requirement waiver, (6) architectural elevation and design plans.

**Mr. Todd moved and Dr. Arena seconded the motion to deny the application as incomplete. The Board approved the motion by unanimous vote (7-0).**

Mr. Krebs noted that he would work with Mr. Kutt to address the issues raised at this meeting.

**Mr. Todd moved and Mr. Hines seconded the motion to waive all fees, excluding abutters' notices, for the applicant upon re-submission of his site plan review application. The Board approved the motion by unanimous vote (7-0).**

The meeting recessed at 8:45 PM

The meeting reconvened at 8:52 PM

#### **Discussion of Current Status of 120 Lafayette Road**

Mr. Todd recused himself from the Board.

Mr. Todd, representing the interests and concerns of abutters and the neighborhood, presented a package of information including several complaints to the Board (attached as Exhibit A) of his June 30, 2003 memo to the Board. Mr. Todd stated that contrary to repeated warnings and a court order, Jim Jones has continued his illegal activities at 120 Lafayette Road. Mr. Todd emphasized that both abutters and neighbors in the vicinity of 120 Lafayette Road have repeatedly asked him for assistance because they are frustrated that Mr. Jones continues to conduct activities that making living in that area very difficult and unpleasant.

Betty Carroll, 19 Juniper Road, commented that Mr. Jones conducted earth/loam-screening activities on June 9, 2003 at 6:10 AM and on June 10, 2003 at 6:55 AM. She added that he has not established, reasonable hours of operation. Mrs. Carroll was very upset about the noise and dust clouds generated from Mr. Jones activities. Betty Duffy, 12 Woodridge Lane, whose property is located at the rear of the Jones' property, noted that the noise and dust is unbearable. She added that Mr. Jones has been conducting these activities since 1997. Albert French, 5 Woodridge Lane, reaffirmed that the conditions generated by Mr. Jones activities are "unbearable." Robert Duffy, 12 Woodridge Lane, stated that he has struggled for years with the Jones operation and thought the resolution was at hand after the court order was issued. He stated that Mr. Jones continues to disregard the zoning ordinance and the court order. Neil Hiltunen, 1 Woodridge Lane, expressed outrage that the Jones' screening activities were in full force at 8 PM this evening. William Duffy, Stratham, NH commented that when his parents retired they were seeking peace and quiet and have found none, in their neighborhood, because of Jones' activities. He attested that his has experienced the effects of his parents' frustration and requested that the Town help in resolving this problem.

Dr. Arena stated that the situation is an issue for the code enforcement officer, who is an extension of the Planning Board. Mr. Hines confirmed that this issue was an ongoing problem. He explained that because of the turnover in code enforcement officer (COE)/building inspector, it has been difficult to completely address the issue. Mr. Hines added that dealing with an individual who does not respond to the COE or the Court has been frustrating for the Town. He explained that the current COE has been doing the best he can, but that the situation has become critical and the Board of Selectmen (BOS) may seek legal counsel for a remedy. The method is unclear at this time because it involves the Court. Mr. Hines stated that the judge, not the BOS, has the right and responsibility to enforce court orders.

Mr. Todd stated that Judge Frasier expects the Town to determine whether there is an excessive amount of materials as stated in the court order. He further added that the Town Engineer should be engaged to determine the excessive amount, if any, and report back to the town. Mr. Wilson commented that he believes this situation is an egregious issue for the parties present and for the Town. He suggested that the Board should request that the BOS contact the judge to execute the June 12, 2002 order.

Ms. Day commented that she looked briefly today at the box of materials at the Town Office regarding the Jones' case. She added she had not been able to review the material beforehand. Ms. Day added that many individuals have stated to her that they are frustrated at the lack of resolution for the Jones situation. She does not want it to appear that the Board is singling out Mr. Jones, but she expressed concern that the Board is walking on a slippery slope because she believes this issue is not a Board responsibility. Mr. Todd explained that Selectman Sullivan advised him to come before the Board regarding this issue.

Dr. Arena agreed that the Jones' issue is not a Board responsibility. Mr. Krebs, responding to Mr. Wilson's request for advice, stated that although Boards traditionally have information that is appropriate to bring to the attention of the BOS, the Board is not an appropriate venue for

citizens' appeals. Mr. Wilson stated that the Board should perhaps file a citizen's complaint. Dr. Arena re-emphasized his position that the Jones' issue is not a Board responsibility.

Mr. Hines stated that the BOS is at the point of action on this issue and he sees nothing wrong with the Board voicing their concern to the BOS. He further added that the COE, with the support of the BOS, is doing his best to resolve this problem. Mr. Todd requested that at a minimum, a cease-and-desist order be issued immediately to limit screening operations to site application only. Laurel Pohl, 100 North Road, commented that the Board has to determine in the site plan review process, if it has any authority to resolve future issues of non-compliance.

William Duffy, Stratham, NH inquired if the Board can revoke the Jones approval. Mr. Krebs answered that it can. Mr. Krebs suggested that the Board could submit a statement to the BOS that the Board had received evidence of non-compliance. The Board could ask the BOS to issue a cease-and-desist order swiftly. Mr. Hines suggested that the Town should hire a part-time code enforcement [shared among multiple towns] whose duties are separate from the Building Inspector.

**Ms. Day moved and Mr. Place seconded the motion for the Board to write a letter to the BOS asking them to use their full authority to enforce the zoning ordinance and site plan regulations in regard to Jim Jones's activities at 120 Lafayette Road and stating that the Board also supports steps to ensure more comprehensive enforcement of the Zoning Ordinance, including the hiring of a Code Enforcement Officer.**

Mr. Wilson noted that the motion had two parts and asked that the motion be divided.

Ms. Day and Mr. Place agreed.

**Ms. Day moved and Mr. Kroner seconded the motion for the Board to authorize the Chair write a letter in response to the abutters' request to the BOS asking the BOS to use their full authority to take whatever measures necessary to ensure that the court order dated May 29, 2002 for Jim Jones, 120 Lafayette Road, is carried out.**  
**The vote was 4-1-1 with Mr. Hines abstaining and Dr. Arena opposed.**

**Mr. Todd was reseated for the discussion of general code enforcement issues.**

**Ms. Day moved, and Mr. Kroner seconded the motion, directing the Chair to write a letter to the Board of Selectmen stating that the Board supports steps to ensure more comprehensive enforcement of the Zoning Ordinance, including the hiring of a Code Enforcement Officer.**

**The vote was 6-0-1, with Mr. Hines abstaining.**

**Ms. Day moved and Dr. Arena seconded the motion to suspend the rule of the Board adjourning at 9:30 PM and extending the meeting until 10:30 PM.**  
**The Board approved the motion by unanimous vote (7-0).**

Mr. Wilson noted that Mr. Krebs had accepted a new position and would complete his tenure at the RPC on July 30, 2003. He and the entire Board thanked Mr. Krebs for his valuable assistance to the Board and the Town of North Hampton over the years. The Board expressed well wishes to Mr. Krebs in his new endeavor with a round of applause.

**Proposed Additions to Site Plan Review Regulation List of Definitions**

Mr. Wilson opened the meeting reading the definition of “sight triangle” to be included in the site plan review regulations.

Mr. Wilson opened the public hearing at 10:06 PM.

There was no comment from the public.

Mr. Wilson closed the public hearing at 10:07 PM.

**Mr. Todd moved, and Dr. Arena seconded the motion to adopt the “Sight Triangle” definition in the Definitions of the Site Plan Review Regulation.**

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

**Final Public Hearing Addressing Site Plan Review Regulation Amendments for Architecture/Appearance Standard**

Mr. Wilson reviewed the changes made at the June 16, 2003 public hearing.

Mr. Wilson opened the public hearing at 10:09 PM.

There was no comment from the public.

Mr. Wilson closed the public hearing at 10:10 PM.

Ms. Day commented that since there were no public comments, the regulation is available for amendment at a later date, should that option be exercised.

**Ms. Day moved, and Mr. Todd seconded the motion to adopt the architectural/appearance standards.**

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

**ProWash Lube Center [22 Lafayette Road]**

Mr. Wilson stated that the Board has the right to appeal the ZBA decision that approved a Special Exception to operate a “service station” as an “aggrieved party” asking for a rehearing. He asked the Board if they wanted to pursue a rehearing request or a request for a joint meeting with the ZBA to discuss the difference between a service station or a gas station and what is the baseline for the number of allowable service stations/gas stations. Mr. Wilson noted that our ordinance does not specify the allowable number. Mr. Hines questioned the number and the definition as it applies to ProWash. He referenced similar activities at Seacoast Harley and Blake’s Chevrolet stating that they are close to the aquifer.

Mr. Todd stated that he talked to Bob Field, the ZBA Chairman after the meeting, asking why the issue of Section 512 was not considered during the hearing. Mr. Wilson referenced that the

Harley and Blake activities are “accessory uses” that are incidental to their primary use of the property. Mr. Wilson noted that the ProWash lube center is a primary use and it raises the issue of the number of allowed service station/gas station uses. He added that the state statutes grant the Board the right to meet with the ZBA to raise the question of admissive judgement in respect to the five (5) criteria. Mr. Kroner added that during recent land use training held at the RPC, he learned that at Planning Board should, on a yearly basis, review variance and special exceptions granted. This type of analysis would assist the Board in evaluating the need for zoning ordinance amendments or establishing the necessity of a meeting with the ZBA to express/discuss the intent of the ordinance.

**Dr. Arena moved, and Ms. Day seconded the motion to arrange a meeting with the ZBA to discuss the Planning Board’s questions/concerns regarding Section 512 as applied to current and future applicants.**

**The vote was 6-0 with Mr. Hines abstaining.**

**At 10:30 PM, Dr. Arena moved, and Mr. Kroner seconded the motion, to adjourn.**  
**The Board approved the motion by unanimous vote (7-0).**

Respectfully submitted,

Krystina Deren Arrain  
Recording Secretary