



## **Minutes**

### **NORTH HAMPTON PLANNING BOARD Meeting: August 5, 2003**

Page 1 of 9

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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) Judy Day, (3) Shep Kroner (4) Joseph Arena (5) Don Gould and (6) Richard Place seated for Ron Todd.

**Absent:** (1) Ron Todd, Vice-Chair; (2) Beth Church, Alternate; (3) Allen Hines, Selectman.

**In attendance:** Krystina Deren Arrain, Recording Secretary/Planning & Zoning Administrator

**Present, not Seated:** (1) Laurel Pohl, Alternate

Mr. Wilson called the meeting to order at 7:03 PM

### **Other Business**

#### Discussion of Violations of Section 505.2, General Regulations of Zoning Ordinance

Mr. Wilson stated this topic would be discussed at the work session on August 18<sup>th</sup>.

#### Discussion on Difference of Opinion with ZBA on Interpretation of Section 512 Zoning Ordinance: Gasoline and Service Stations

Mr. Wilson brought up this issue stating that since sending the letter to the ZBA, which the Board authorized, he investigated records at the NH Dept. of Environmental Services (DES). The DES issues permits for all above- and below-ground tanks and Mr. Wilson's investigation determined that three (3) of the ten stations identified by the ZBA were not issued permits until after 1973. Mr. Wilson provided the following information:

1. Post Road Grocery tanks were not installed until 1984.
2. Mel's Truck [Bruce Transportation] tanks were installed in 1978.
3. Robinson Construction tanks were installed in 1979.

Mr. Wilson asked for permission from the Board to petition the ZBA for a re-hearing of the ZBA determination of the number of gasoline stations that were in operation in March 1973. Mr. Wilson added that the Heritage Commission confirmed that only six (6) gas stations were operating in 1973.

**Dr. Arena moved, and Mr. Kroner seconded the motion, to petition the ZBA for a re-hearing of Section 512.**

Ms. Day asked Ms. Arrain if the ZBA public hearing on Section 512 was properly posted. Ms. Arrain stated that all cases that were being heard at the July 16, 2003 ZBA meeting were legally posted. Ms. Arrain commented that since the Board's letter requesting a joint meeting to discuss Section 512 was received after the ZBA agenda was posted, the Board's request, under the timing circumstances, could only be addressed under "General Correspondence" or "Other Business." Mr. Wilson stated that the public hearing of the interpretation of the zoning ordinance was not posted properly and that was the issue.

Mr. Gould noted that the Board's petition to the ZBA is a question of standing. He was unsure if the Board had standing to request a rehearing. Mr. Wilson stated that according to the Rockingham Planning Commission (RPC), the Board is an interested party and has standing. He further added that any resident is an interested party and if need be, he could initiate a petition on this issue as a private citizen of the town.

**The vote was 5-1 with Mr. Gould dissenting.**

## **Items Considered**

### **Case #03-21 -- Map/Lot #007-053-000: 35 Lafayette Road**

**Applicant:** Brian Joseph Levasseur, 61 Country Brook Estates, Rochester, NH 03839

**Application:** Request for Permit referencing Article V, Section 505.5(a) Permit for Temporary Structure.

Mr. Wilson opened with a statement that he questioned the applicant's right to be heard. He stated that W/S Hampton Properties LLC is the property owner and not the applicant. Mr. Wilson questioned whether the Board could accept the application. Ms. Arrain commented that Attorney Pelech represents the owner. She suggested that perhaps Attorney Pelech could be consulted on the applicant's right to be heard. Mr. Wilson's interpretation of the ordinance clearly indicated that the owner should make the application. Mr. Gould suggested that the Board could approve the application subject to the condition that the applicant would secure a letter from the owner authorizing the location and nature of his food trailer operation.

**Mr. Gould moved, and Dr. Arena seconded the motion, to approve the application subject to the condition that the applicant would secure a letter from the owner authorizing the location and nature of his food trailer operation.**

The applicant stated that he operates an 8-1/2-foot by 16-foot food trailer serving hot and cold foods to the public; primarily customers that frequent Home Depot. His food trailer is located near the entrance to Home Depot. The applicant explained that he has a contract with Home Depot to operate on the premises. He has all the required licenses and approvals from the Health and Fire Departments as well as a NH Peddler's license. He operates the business with his wife and hours of operation are from 9 AM to 3 PM daily. The food trailer is permanently located on

site, but can be moved. He removes trash daily and has two food deliveries per week. Wastewater is contained in five-gallon drums and disposed of at the Home Depot leach field. The applicant presented a petition of 165 names in support of his remaining and operating at the present location.

Mr. Wilson opened the public hearing at 7:24 PM.

Mr. Wilson closed the public hearing at 7:25 PM after hearing no support or opposition.

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

**Case #03-32 -- Map/Lot #003-086-000: 17 Lafayette Road**

**Applicant:** Seacoast Harley Davidson, 17 Lafayette Road, North Hampton, NH 03862

**Application:** Request for Site Plan Review to expand overflow parking/motorcycle training area.

Tobin Farwell, Altus Engineering, representing the applicant explained that Seacoast Harley Davidson had recently purchased land from the former B& M R.R., now Guilford Transportation. Their plan is to expand their current over flow parking area, pave it at a future date and build a simple storage building. Mr. Farwell commented that overflow parking would be used primarily during warm weather events and the applicant does not perceive a need to remove snow from the area in winter months. To accommodate the changes in this area, the current detention pond was re-designed and relocated.

Mr. Farwell displayed and explained the purpose of and details of the proposed storage building. He explained that the building was designed with a flat roof for safety reasons. Mr. Farwell noted that a pitched roof poses a serious hazard of heavy snow sliding off and causing personal injury. Mr. Wilson inquired if Mr. Farwell was aware of the newly adopted architecture/appearance standards. Mr. Farwell responded he did not, but added that the building is strictly a storage building and far removed from sight.

Mr. Farwell addressed the issues raised by Mr. Krebs/RPC in his July 30, 2003, Development Review memo. Mr. Wilson inquired if the new stormwater drainage report calculations were premised on an impermeable (paved) surface parking lot. Mr. Farwell stated it was calculated on an impermeable (paved) parking lot.

**Ms. Day moved and Mr. Gould seconded the motion to accept the application as complete. The Board approved the motion by unanimous vote (6-0).**

Mr. Wilson expressed concern about the location of the detention pond, the reasonableness of paving the area and the application of the architectural standards to the proposed storage building. He further noted that both flat roofs and concrete block buildings are not favored by the architecture/appearance standard.

**Dr. Arena moved and Ms. Day seconded the motion to continue the hearing until September 2, 2003.**

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

**Case #03-33 -- Map/Lot #007-148-000: 229 Atlantic Avenue (Joe's Meat Shoppe)**

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

**Application:** Re-submittal for Site Plan Review for addition to Joe's Meat Shoppe with Requests for Waivers for (1) Section X.D.3 – Required 10 foot landscaped buffer and (2) Section XII – Parking Requirements.

Joe Kutt addressed his waiver applications stating that (1) the 10-foot landscape buffer is impractical because of the location of his property and (2) the parking requirement of 45 spaces is unattainable because of the location of his property – he requested the waiver accommodate the 24 parking spaces as designed on his site plan.

**Mr. Gould moved and Dr. Arena seconded the motion to grant the waiver for Section X.D.3—10 foot landscaped buffer because of the unique configuration of the Kutt property that makes compliance nearly impossible.**

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

Mr. Wilson opened the public hearing at 8:02 PM.

Mr. Wilson closed the public hearing at 8:03 PM after hearing no support or opposition.

**Mr. Gould moved and Dr. Arena seconded the motion to grant the waiver for Section XII – Parking Requirements because of the unique characteristics of lack of space, a well-established business and a good neighbor to the Town Complex.**

Ms. Day asked if there would be increased traffic in the area because of the location of the new business, Violette's Flower Shop. Mr. Kutt explained that the flower shop business is primarily a delivery service rather than a retail operation. As such, the flower shop should not increase automotive traffic to any significant number.

Mr. Wilson opened the public hearing at 8:06 PM.

Mr. Wilson closed the public hearing at 8:07 PM after hearing no support or opposition.

Mr. Wilson added that Mr. Kutt's expansion is not necessarily increasing business but the applicant has added two additional parking spaces as well as a handicap accessible ramp, which is a benefit.

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

**Mr. Kroner moved and Dr. Arena seconded the motion to accept the application as complete.**

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

Mr. Wilson opened the public hearing at 8:14 PM.

Mr. Wilson closed the public hearing at 8:15 PM after hearing no support or opposition.

**Ms. Day moved and Mr. Kroner seconded the motion to approve the application with the following conditions:**

- 1. Two (2) Recordable mylars: (a) Existing Conditions and (b) Proposed Conditions.**
- 2. Dumpster must be properly screened by an enclosure surrounding the unit(s).**

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

**Case #03-34 -- Map/Lot #007-052-000, #007-053-000 and #007-056-000: 33-49 Lafayette Rd.**

**Applicant:** W/S North Hampton BB LLC, W/S North Hampton OP LLC and W/S North Hampton Properties LLC

**Application:** Preliminary Consultation for three (3) commercial buildings -- two (2) retail and one (1) restaurant.

- a) John F. Corbett, W/S Development Associates LLC, Chestnut Hill, MA
- b) Bernard Pelech, Wholey & Pelech, Attorney-at-Law, Portsmouth, NH
- c) Richard Landry, Landry Architects, Salem, NH
- d) Doug Reynolds, Gorrill-Palmer Engineers, Portland, ME

Mr. Corbett, representing the applicant, stated they are planning on completing the Lafayette Crossing project with the addition of three additional buildings on site. Although the tenants for these buildings are not confirmed, they plan to add a full-service restaurant, a multi-service retail store and a women's apparel store. The architect, Mr. Landry, provided proposed architectural renderings of the proposed buildings. Mr. Corbett added that the Lafayette Crossing Complex had received a landscaping award and these future plans would be landscaped appropriately. He thanked the Board for its feedback in the past and asked for feedback on this conceptual proposal. Mr. Corbett stated that the restaurant would not be a drive-thru or fast food. He added that although they anticipate a franchised restaurant for the location, he anticipates that the franchise will be amenable to embracing the architectural/appearance standards recently established.

Mr. Kroner expressed concern about increased traffic as a result of this expansion, specifying the concern about increased traffic on Cedar Road. Mr. Corbett responded that a traffic study would be conducted as part of the submittal process and would address Mr. Kroner's concern. Mr. Wilson cited architectural standards, dark sky lighting standards and a review of the traffic pattern within the complex as issues to be addressed at the time of site review submittal.

Attorney Pelech stated that the applicant had submitted an application to the ZBA for variances needed. He noted that the applicant would return with traffic and drainage studies. They are awaiting septic approval from the DES. To allay the concerns about truck traffic within the parking area, Mr. Corbett noted that truck delivery access is provided at the rear of the complex.

The meeting recessed at 8:50 PM  
The meeting reconvened at 8:55 PM.

**Case #03-35 -- Map/Lot #007-115-U09: 44 Lafayette Road**

**Applicant:** Janet Giovanniello, 500 Ocean Road, Portsmouth, NH 03801

**Application:** Change of Use Request to operate a Pilates Studio.

The applicant began her presentation stating that she has twenty (20) years of Pilates experience and chose North Hampton in which to open her studio. Mr. Wilson questioned why her application for a change of use had come before the Board. He noted that three (3) exercise studios currently operate in town, yet the Building Inspector could not determine how approvals to operate were granted. The Board was uncertain on how to process this application. Mr. Gould commented that he recalled that the exercise studios fit into the “retail” category. Mr. Wilson added that the Board needed to remedy/address the list and/or category of permitted uses for clarity. Ms. Day was concerned about adequate parking for the facility. Ms. Giovanniello responded that the unit location is at the opposite end of the Post Office area where traffic is most concentrated. Dr. Arena noted there is additional parking in the rear of the complex.

**Ms. Day moved and Dr. Arena seconded the motion to approve the change of use.  
The Board approved the motion by unanimous vote (6-0).**

**Case #03-36 -- Map/Lot #007-063-000: 61 Lafayette Road**

**Applicant:** Halil and Melissa Ozkurt, 25 Spruce Lane, Stratham, NH 03885

**Application:** Site Plan Review for an existing retail shop into a Subway sandwich shop with no footprint changes of building. Request for Waiver for Greenspace Requirement.

- a) Melissa Ozkurt, Applicant
- b) Brian O’Brien, C. B. Richards Realty Management
- c) Frank Dufour, Subway Regional Management

Ms. Ozkurt explained that her husband was experiencing a flight delay because of poor weather and could not be present. She commented that they currently own and have been operating the Subway in Portsmouth for two (2) years. There is no cooking on site and Subway Sandwich Shops offer healthy alternatives to fast food restaurants. Ms. Ozkurt stated they want to become part of the community and look forward to actively supporting North Hampton activities and organizations. She added that they plan to use the existing footprint of the building making improvements as needed. They plan to use the current sign framework with two additional signs on the front of the building. The septic system was installed in 2001 with a maximum usage of 200 gals/day and their projected usage is 175 gals/day. She referenced the Concord Subway that uses 213 gals/day and the Hooksett Subway that uses 178 gals/day as examples of septic usage. The required 12 parking spaces are located between the front and rear of the property.

Mr. Kroner questioned Ms. Ozkurt's statements about the adequacy of the existing septic system. Specifically, he noted that North Hampton, unlike other localities did not have a sewer system. Mr. Wilson commented that although the applicants had requested a greenspace waiver, they require a variance to Section 406.8 for the 10-foot buffer. He stated only the ZBA can issue a variance, not the Planning Board. Mr. O'Brien commented that the owner spent \$26,000. for the septic system and the required site plan is a half year's rent. He believed the Ozkurts provided enough information to the Board to receive approval. Mr. O'Brien noted that former occupants had been food service providers and the location had been adequate to meet town requirements.

Mr. Gould added that the Board had just granted a similar waiver to Joe's Meat Shoppe. Mr. Wilson stated that Mr. Kutt had received a variance for the landscape buffer from the ZBA. Mr. Wilson suggested that perhaps the Board could waive the site plan and consider it a change of use. A long discussion ensued about septic usage. Ms. Ozkurt emphasized that Subways use less water/septic load than average restaurants. Mr. Gould suggested a modified site plan. He did express concern about the septic and parking. Mr. O'Brien explained that wooden post barriers prevent anyone driving over the septic system. Ms. Ozkurt noted that their hours of operation are 10 AM to 7 PM. Mr. Wilson noted that the Board would require a modified site plan.

**Ms. Day moved and Mr. Place seconded the motion to deny the application for the following reasons:**

- 1. Requires Recordable Site Plan Mylar**
- 2. Requires Variance for Article IV, Section 406.8 Landscape Buffer**
- 3. Requires Verification that the Septic System Capacity is Adequate for Restaurant Usage**
- 4. Requires the Addressing of Parking Issues**

**Ms. Gould moved to amend the motion by adding Item #5. Ms. Day approved the amended motion and Mr. Place seconded the amended motion.**

- 5. Requires the Inclusion of Additional Landscaping on Property**

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

Mr. Kutt, Joe's Meat Shoppe, commented on the septic system stating that the DES should evaluate the adequacy of the current system, noting that the DES is more stringent on restaurants with septic systems as opposed to those with sewers. He also added that the twelve parking spaces for the Subway site, in his opinion, would be too low. He needed 49 parking spaces with only 12 seats at his business.

**Mr. Gould moved and Dr. Arena seconded the motion to waive re-application fees except for abutters' fees.**

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

**Mr. Day moved and Dr. Arena seconded the motion to continue the meeting until 10:45 PM**  
**The vote was 5-0 with Mr. Gould abstaining.**

**Case #03-37 -- Map/Lot #003-099-000: 22Lafayette Road**

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

**Application:** Re-submittal of Site Plan Review for the addition of lube center. Request for Conditional Use Permit Application under Article IV, Section 414.3 for (1) motor and machinery service and assembly and (2) onsite handling and storage of waste oil in an above ground storage tank. Tank to be located in basement of proposed building. Request for Waiver of Section X.C. Drainage Specifications of the Site Plan Review Regulations.

1. George Chobanian, Civil Consultants/Engineers, South Berwick, ME
2. Jeff Eiras, Owner, ProWash, Hampton, NH
3. Steven Ells, Ells & Flagg, Attorneys-at-Law
4. Brian Messina, Pro Wash, General Manager, Hampton, NH

Mr. Chobanian, representing the applicant, stated that the concerns and issues raised by John Krebs/RPC and Ed Kelly/KNA were addressed and the applicant had come before the Board again asking for approval of the site plan review and waivers.

**Mr. Gould moved and Ms. Day seconded the motion to accept the application as complete.**

Dr. Arena asked about the proposed sump pump. Mr. Chobanian explained that the sump pump would be located in the building's lower level and any liquids pumped out would be placed in receptacles and removed from the site. He emphasized that the applicant is required to adhere to strict EPA and NH DES requirements.

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

Mr. Gould asked the applicant to address the conditional use application. Mr. Chobanian referred to the information presented in letters from (1) NH DES and (2) Civil Consultants. Mr. Gould inquired if there have been any oil discharge disasters. Mr. Chobanian responded that he had no knowledge of any disasters. He noted that Civil Consultants is very experienced in performing engineering projects for above- and below-ground tanks. Mr. Chobanian commented that the EPA has updated and applied current below-ground technology standards to above-ground tank standards' requirements. Mr. Gould asked about data on tanks. Mr. Chobanian noted that every state has data but he could not attest to whether it was current.

Mr. Wilson commented that he is more concerned about gasoline leakage rather than oil leakage. Dr. Arena asked about appropriate lighting. Mr. Chobanian stated that lighting would be fully adequate and appropriate. He also added that above-ground tanks would be in concrete containers.

**Ms. Day moved and Mr. Gould seconded the motion to grant a conditional use permit.**

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



Ms. Day commented that the bright blue trim is not a “New England” muted color. She noted that the recently adopted architectural standard would not be met using the existing blue trim color. Mr. Eiras commented that they would not use the “bright blue.” Mr. Wilson commented that the waiver request for drainage was being dismissed because plan specifications reveal that there is less permeable surface with the proposed building. Thus, a waiver is not necessary.

**Ms. Day moved and Mr. Place seconded the motion to approve the site plan with the following conditions:**

- 1. Requires Recordable Site Plan Mylar With Appropriate Stamps**
- 2. Requires EPA and NH-DES Approvals**
- 3. Requires External Lighting to Conform to Dark-Sky Standard**

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

Ms. Day questioned why the meeting was being videotaped. Mr. Wilson commented that he thought it was the Town’s decision. Ms. Day commented that in the Board’s procedures the audio-taping of meetings was part of the Board’s permanent record whereas videotaping was not.

**At 10:30 PM, Mr. Gould moved, and Mr. Place seconded the motion, to adjourn.**  
**The Board approved the motion by unanimous vote (6-0).**

Respectfully submitted,

Krystina Deren Arrain  
Recording Secretary