



Minutes

NORTH HAMPTON PLANNING BOARD Public Hearing on January 7, 2004

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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.

Present: (1) Phil Wilson, Chair; (2) Ron Todd, Vice Chair; (3) Jenifer Landman, Selectperson; (4) Joseph Arena; (5) Don Gould; (6) Shep Kroner, (7) Judy Day.

In attendance: (1) Laurel Pohl, Alternate; (2) Krystina Deren Arrain, Recording Secretary/Planning & Zoning Administrator.

Absent: (1) Richard Place, Alternate and (2) Beth Church, Alternate.

Members of the Public: (1) Diane Kensler, (2) Robert Landman, (3) Christopher Ganotis, (4) Mike Iafolla, (5) Mark Johnson, (6) Walter Nordstrom, (7) John Anthony Simmons, (8) Peter Simmons, (9) Sue McDonald, (10) Christopher Ganotis.

Meeting was convened at 7:00 PM.

Mr. Wilson explained that there are two citizens' petitions that will be addressed separately.

I. Public Hearing for:

1. Citizen Petition: Petition For Amendment To The Town of North Hampton Zoning Ordinance Pursuant To New Hampshire RSA 675:4

WE, the undersigned, registered voters of the Town of North Hampton, do hereby Petition the Board of Selectmen for the Town of North Hampton to amend the Zoning Ordinance, by placing upon the Ballot for the 2004 Town Meeting the following Warrant Article:

"Are you in favor of amending Section 405 of the town of North Hampton Zoning Ordinance entitled "Permitted Uses" by deleting as a use permitted by Special Exception, from the R2 Medium Density District and the R3 Low Density District, "home occupations" as permitted by Special Exception in the R2 Medium Density District and R3 Low Density District."

The petition was presented to the town by Laura Simmons and at least 24 other registered voters.

2. Citizen Petition: Petition For Amendment To The Town of North Hampton Zoning Ordinance Pursuant To New Hampshire RSA 675:4
WE, the undersigned, registered voters of the Town of North Hampton, do hereby Petition the Board of Selectmen for the Town of North Hampton to amend the Zoning Ordinance, by placing upon the Ballot for the 2004 Town Meeting the following Warrant Article:

“Are you in favor of amending Section 507 of the town of North Hampton Zoning Ordinance entitled “home occupation” by adding thereto the following sub-sections:

507.6 *That the home occupation shall not occupy more than 300 square feet in a dwelling or accessory building.*

507.7 *The home occupation shall result in no detriment to property values in the vicinity or result in a change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of building and other structures, parking areas, access ways, or the storage of vehicles.*

507.8 *The home occupation shall not create a traffic safety hazard or result in a substantial increase in the level of traffic congestion in the vicinity.”*

The petition was presented to the town by Marjorie Iafolla and at least 24 other registered voters.

Ms. Day noted that a petition once filed is an active ordinance until it is not enacted by the town vote. As a result, applications for home occupations in R2 or R3 zoning districts cannot be considered until the March vote.

Ms. Landman questioned if the main/principal petitioner's name must be referenced in the citizens' petition. Mr. Gould noted that the RSA's do not mandate a reference to a petitioner. Mr. Gould asked if the Board could combine the public hearing on both because they are similar. Mr. Wilson responded that, according to the letter of the law, each citizen's petition required a separate hearing.

At 7:10 pm Mr. Wilson opened the public hearing for Petition #1-- Removal of Home Occupations from Special Exceptions in Section 405 in R2 and R3 districts.

Mr. Wilson asked whether one of the petitioners would explain the purpose/focus of the petition. Mr. Iafolla explained that a recent home occupation case precipitated this petition. The petitioners felt the home occupation ordinance did not fully address neighbors' concerns and wanted to establish a higher standard for home occupations in the R2 and R3 zones.

Mr. Iafolla stated that like variances special exceptions are outside the law. Mr. Wilson stated said that according to the RSA's, Special Exceptions are inside the law in that they are explicitly provided by the RSA's and are permitted only under special conditions/requirements.

Mr. Iafolla and the petitioners felt that in North Hampton's Zoning Ordinance another more stringent test should be added.

Ms. Landman asked Mr. Iafolla what was the specific, outstanding issue that prompted the citizens' petition. She added that with the worldwide web, the increase of cottage industries and the change in our economic climate, home occupations have increased and are in most neighborhoods. Mr. Iafolla did not answer Ms. Landman's question.

Sue McDonald remarked that she felt the citizens' petition is very restrictive and unnecessary, believing there are enough checks and balances in the current zoning ordinance that address citizens' concerns. Home occupations on the whole are not offensive to a neighborhood. She and her husband hoped to possibly have a home occupation when they retire.

Dr. Arena said the town's focus is to remain rural, and the provisions for home occupations in our current ordinance are sufficient. The concern is that businesses under the ruse of "home occupations" become common.

Diane Kensler said a consensus of the neighborhood should be a key issue when considering home occupations. Mr. Landman added that he has a legal home occupation. He is concerned about the economy and from his association with the RPC, he knows that numerous communities are writing provisions for home occupation in their zoning ordinances to encourage the formation of new business opportunities. New Hampshire is a "craftsperson" state with many home occupations. Allowing and encouraging home occupations are the smart things to do. Ms. Pohl said the trend was toward cottage industries and home offices. She suggested that the Board address updating the ordinance because of the growth of the Internet.

Mr. Iafolla suggested that the phrase "shall be permitted" should be changed to "may be permitted." It would provide more discretionary powers for the ZBA. Mr. Johnson said the "shall" statement does limit the Board. Mr. Johnson said he opposes the petition stating that New Hampshire was built on home occupations.

Mr. Gould commented that he was surprised, after researching the RSA's, that Special Exceptions run with the land rather than the individual. A discussion ensued about the common misconception that variances run with the land, but special exceptions are granted to a specific landowner and do not run with the land. The sense of the meeting was that special exceptions do run with the land and differ from variances in that a town's zoning ordinance should provide distinct criteria for the ZBA to apply in considering special exceptions.

Mr. Ganotis remarked that according to recent economic statistics, self-employment is the largest growing economic activity. Technology has enabled the increase in self-employment and telecommuting activities. There are craftsmen, hobbyists, entrepreneurs and more that make up this trend. He felt this petition was draconian and does not serve any reasonable purpose. Mr. Ganotis asked that the Board ask the petitioners to withdraw their petition. He also suggested that the petitioners and Board work together to draft a more reasonable ordinance.

Mr. Nordstrom wondered why home occupations are excluded only in R2 and R3 zones and not the remaining two zones. He also questioned why the higher density districts are included in the home occupations and the lower densities are excluded from home occupations.

Mr. Iafolia said that he is willing to withdraw the petition. Mr. Wilson said that he was not sure whether a citizens' petition could be withdrawn, but if it were, it would likely require that all the petitioners needed to sign the withdrawal. Mr. Nordstrom suggested that only five (5) are needed to withdraw and the number of petitioners' would fall below the required 25 signatures. Ms. Landman believed the citizens' petitions couldn't be changed in any way.

The public hearing on Section 405 for limiting home occupations was closed at 8:15 PM.
The public hearing on Section 507 adding three (3) conditions commenced at 8:16 PM.

Ms. Landman stated that she strongly opposed both amendments specifying that they were negative to the quality of life that is cherished in North Hampton. A home occupation is a tradition in this town. She believed the amendments are unreasonable.

Diann Kinsler was concerned that nuisances should not be allowed and this amendment is trying to protect against creating nuisances in the town's neighborhoods. Sue McDonald strongly opposed the amendments stating that all the checks and balances are in place and we should leave well enough alone. Mr. Johnson expressed concern with the square footage requirement. He felt the 300 square feet limit was arbitrary.

Dr. Arena said home occupations are legal because the federal government through the IRS makes allowances for offices/businesses in the home. Mr. Pohl said zoning ordinances do protect neighbors' rights and suggested that the Board draft an ordinance that would balance neighbors' rights and protect the town. Mr. Iafolia emphasized the importance of balancing the rights of the neighbors and the rights of citizens and the town.

Mr. Wilson closed the public hearing on additions to Section 507 at 8:31 PM

Mr. Gould commented that the petitions are not in the best interest of the town. Home occupations should be allowed in all zones and the square footage requirement is flawed and he doubted if the amendment could be upheld if challenged legally. Dr. Arena was strongly opposed and suggested changing "shall" to "may." Ms. Day strongly opposed both petitions and encouraged communications between the ZBA and Planning Board to discuss issues of common concern. Mr. Kroner commented that any ordinance that would split the zones in the community is not a positive step. He did not support either petition.

Ms. Landman reiterated her opposition to both petitions because the town and country as a whole have benefited from the existence of home occupations. She encouraged the petitioners to withdraw the petitions. Mr. Wilson complimented the attendees for their inputs and interest. He remarked that he thought the square footage requirement was arbitrary. He agreed with the petitioners' concern that neighbors' concerns are discounted when the ZBA renders a decision, specifically because the word "shall" constrained the ZBA to approve a request for a home

occupation whenever the applicant met the specified criteria; there was no latitude for the ZBA to deny an application on the basis of neighbors' objections. Mr. Wilson said he could not support either petition.

Mr. Todd moved and Dr. Arena seconded the motion that the ballot and town report reflect that the Board would not recommend the petition for section 405.
The vote was unanimous (7-0).

Mr. Todd moved and Dr. Arena seconded the motion that the ballot and town report reflect that the Board would not recommend the petition for section 507.
The vote was unanimous (7-0).

Mr. Todd moved and Dr. Arena seconded the motion to authorize Mr. Todd to consult with the NHMA to determine if the petitioners can withdraw the petition.
The vote was unanimous (7-0).

Mr. Todd moved and Ms. Day seconded the motion that he Board will investigate amending Section 507 on the 2005 town warrant.
The vote was unanimous (7-0).

Meeting adjourned at 8:53 PM.
Meeting reconvened at 8:58 PM.

Continuation of Public Hearing for Zoning Amendments

Mr. Wilson remarked that the Board was continuing its public hearing on Section 512 at 9 PM.

Mr. Kroner remarked that other commercial/industrial sites were not being held to this standard, the focus of which was public health and safety. Mr. Wilson commented that commercial/industrial business owners practiced safer procedures more than the occasional individual who would pump gasoline into their vehicles. Ms. Day questioned whether the 36 pumps standard would remain if any of the refueling facilities were abandoned. Discussion ensued about whether an abandonment feature existed in this amendment.

Mr. Simmons inquired as to the intent of having a gas station located a 1,000 feet apart from another gas station. Ms. Pohl said the purpose of this amendment was to prohibit a concentration of gas stations to prevent spillage and environmental damage. Mr. Simmons said it is possible to determine who the violator was by the dye in the gasoline. Mr. Wilson questioned whether this was possible, except to distinguish diesel fuel for motor vehicles from heating oil.

Mr. Gould recused himself from the meeting at 9:15 PM
Ms. Pohl was seated for Mr. Gould at 9:15 PM

Mr. Simmons challenged the reason behind the amendment and suggested that Mr. Wilson was not telling the truth about the motivation for the amendment. He alleged that it is an attempt to prevent him from exercising the Special Exception he was granted for a gas station at his 72-74 Lafayette Road location. Mr. Simmons suggested that the Board conduct additional research to establish justification before proceeding with the amendment. He remarked that the data had not been sufficiently compiled to justify the amendment as written.

Mr. Wilson stated that the Board's work and his personal work on the amendment had nothing to do with Mr. Simmons's personal property. In fact, the ZBA had suggested that the Planning Board act to resolve the lack of clarity in the 1973 provision. Further, Mr. Wilson noted that the number of gasoline stations that he had determined were in existence and operating in 1973, while different from the number determined by the ZBA, was still sufficient to allow for Mr. Simmons's project to proceed. Mr. Wilson listed the resources he accessed in compiling the data used in drafting the amendment.

Mr. Iafolia explained that according to Forrest Griffin, the drafter of the 1973 amendment, the purpose of the amendment was not to prohibit additional gas stations, but rather to create a mechanism in which a review and evaluation process would be implemented when a gas or service station was proposed. Mr. Wilson agreed with Mr. Iafolia's statement adding that Mr. Griffin had expressed the same notion to him and had also mentioned concerns about environmental pollution. Mr. Wilson re-emphasized that the purpose of the amendment was to address the change in the structure of the gas station business and to address the potential for an environmental disaster that would cause damage to the town's water resources.

Mr. Iafolia commented that both the Gulf station and North Hampton Grocery are possibly dangerous areas, whereas, the Irving and Mobil and Peter Simmons's site pose no problem to the aquifer because they are on wetlands. Wetlands are natural barriers to the aquifers. He added that wetlands are not part of the aquifer or a direct water resource.

Ms. Pohl noted that MtBE remains in the soil for 10 years after which time the additive can leach into groundwater through rainwater runoff. Mr. Johnson also addressed the fact that other commercial sites are not addressed in this amendment. Mr. Todd noted that only retail sites are affected. Mr. Wilson indicated that when the Board processes applications for non-retail sites, they hold the applicants to stringent review and standards of safety. The cumulative effect of consumer gas sales poses the greatest potential danger to the town.

Mr. Johnson remarked on the possibility that the cap on future growth could put Irving into a monopolistic scenario with the constraint of trade. Mr. Wilson commented that the ZBA could grant a variance to an applicant if it was clear that a monopolistic strategy was in practice to eliminate competition. Mr. Wilson said that Mr. Simmons's Special Exception would be honored during a Site Plan Review for his property because it was grandfathered. The 36-pump limit is a standard not a ceiling. He commented that the ZBA would not be able to grant any further special exceptions for refueling facilities until the total number of pumps fell below the "36 pump" standard, even if Mr. Simmons's project increased the number in town to more than 36.

Mr. Wilson reiterated that Mr. Simmons's property is grandfathered and will not be restricted by this amendment, but would have to meet all the current site plan review regulation conditions. Mr. Wilson stated that during the work session on this amendment, the sense of the Board was that grandfathered locations, specifically Mr. Simmons's property at Lafayette Road and Atlantic Avenue, would not be held to the amendment, but would be grandfathered.

Ms. Day moved and Ms. Pohl seconded the motion to go forward with the wording for Section 512 as written and would hold the final public on January 20th.

The vote was unanimous (7-0).

Mr. Kroner moved and Dr. Arena seconded the motion adjourn.

The vote was unanimous (7-0).

The meeting adjourned at 10:15 PM

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary/Planning & Zoning Administrator