



Minutes

NORTH HAMPTON PLANNING BOARD Regular Meeting on May 4, 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) Shep Kroner, Vice Chair; (3) Ron Todd; (4) Joseph Arena; (5) Craig Salomon, (6) Judy Day.

Alternates Present: (1) Laurel Pohl.

Members Absent: (1) Jon Rineman, Selectman Representative; (2) Beth Church, Alternate.

In Attendance: (1) Jill Robinson, Circuit Rider/RPC and (2) Krystina Deren Arrain, Recording Secretary/Planning and Zoning Administrator.

Mr. Wilson convened the meeting at 7:07 PM

Old Business

Case #04-03 -- Map/Lot #022-014-001: 223 Post Road, Nicholas & Emmanouella Birmbas, 223 Post Road, North Hampton, Request for Subdivision to create two (2) lots from one (1) lot.

Mr. Wilson noted that the Board received a letter from Atty. Bernie Pelech, representing the applicant, who requested a postponement until June 1, 2004 because the drainage study they commissioned was not completed in time for submission and consideration during the meeting.

Dr. Arena moved and Mr. Todd seconded the motion that Case #04-03 would be continued until June 1, 2004.

The vote was unanimous (6-0) to continue Case #04-03 until June 4, 2004.

Case #04-09 -- Map/Lot #007-119-000: 60 Lafayette Road, Glenn's Automotive Plus, 60 Lafayette Road, North Hampton, NH 03862. Application for Site Plan Review for Auto Service, Auto Parts Sales and Auto Sales. Applicant has requested waivers for the following: (1) NH Wetlands Permit, (2) Traffic Impact Analysis, (3) Water courses and ponds, (4) Wetlands and buffers, (5) 100-year flood elevations, (6) Rock ledges, (7) Existing and proposed culvert piping, (8) 100-year storm drainage control plan, (9) Existing and proposed street lighting, (10) Existing and proposed loading docks, (11) NH WSPCD septic system design permit, (12) Soil erosion and sedimentation plan, (13) Review by Town Engineer.

Mr. Wilson noted that the Board received a fax from the Atty Karyn Forbes, the applicant's representative, requesting a postponement until June 1, 2004 because the corrections to the site plan had not been completed in time for the meeting.

Mr. Kroner moved and Dr. Arena seconded the motion that Case #04-09 would be continued until June 1, 2004.

The vote was 5-0-1 with Mr. Salomon abstaining to continue Case #04-09 until June 4, 2004.

Case #03-50 -- Map/Lot #006-131-000: 19 Maple Road, Cadillac Auto Company of Boston, 19 Maple Road, North Hampton, Request for Subdivision to create five (5) lots. *This session was postponed at the April 6, 2004 meeting with the stipulation that applicant renotify abutters of this meeting. Abutters were notified as required*

Mr. Wilson presented a brief overview of the case history explaining that the applicant was seeking approval for a five-lot subdivision. The applicant had requested four postponements because they were seeking relief from the ZBA to determine if the applicant's lot qualified for a backlot subdivision. The ZBA determined the applicant's lot was not a lot of record as of March 1992, but the ZBA granted a variance request for relief from the 175-foot frontage requirement.

Mr. Wilson stated that he felt the Board's December 2, 2003 acceptance of jurisdiction for completeness of the application was defective because the application was incomplete because it required a variance. Mr. Todd noted that he did not recollect accepting jurisdiction because the ARC noted that many items were lacking in the applicant's original submittal. Mr. Salomon remarked that the appeal period from ZBA variance is still pending and the Board could not make a final determination until the appeal period had lapsed.

Atty. Boldt, representing the applicant, commented that the applicant had been proceeding on the condition that on December 2, 2003, the Board took jurisdiction and the applicant wanted to move the case forward. He added that the applicant had submitted updated plan information today with the assumption that the Board was moving forward on the application. Mr. Todd remarked that during the December 2, 2003 meeting, the application was accepted as complete with the condition that town counsel would issue an opinion that the applicant's lot was a lot of record as of March 1992. Therefore, Mr. Todd noted, with special town counsel's opinion that the lot was not a lot of record, the acceptance of the application was null and void. In addition, he noted that the ARC, in its review, identified other submittal non-conformities that suggested that the application was incomplete and the Board should not accept jurisdiction. Mr. Todd questioned whether the Board should accept new information shortly before the meeting when the deadline for new information was at least 15 earlier and questioned if the Board should accept applications that do not meet the subdivision regulation requirements. Ms. Day stated that the Board had already accepted the application as complete with the caveat that the Town's Attorney consider whether the lot was a lot of record as of March 1992.

Mr. Salomon noted that he understood the Board's commitment to validating application requirements, but he encouraged a common sense standard when considering applications and suggested that some of the issues that could be easily remedied could be enacted as conditions of approval. Mr. Wilson ruled that the Board's prior decision to accept jurisdiction included a caveat that included an opinion by the town special counsel that the lot was a lot of record as of March 1992; and since the Board did not get that opinion from town counsel, the Board has not accepted jurisdiction.

Mr. Todd moved and Dr. Arena seconded the motion that the Board determined the application was incomplete because its prior acceptance of jurisdiction was based on the condition that we receive the opinion from town counsel that Map 6 Lot 131 was a lot of record as of March 1992 and that the ZBA had determined that the lot was not a lot of record and the Board did not receive an opinion from town counsel that the lot was a lot of record.

The vote was 5-0-1 with Mr. Salomon abstaining because he was not at the December 2, 2003 meeting.

Mr. Todd moved and Dr. Arena seconded the motion that the Board not accept the application as complete based on the following information that was missing from the application:

- 1. Deed reference should be on drawing and deed should be part of application (Sec VIII.B.12). As noted in Krebs review, the deed submitted is for a lot of 48.6 acres, not the 11.89-acre parcel being considered in this proposal. If such a deed was not created after the Boulder sub-division, one should be obtained.**
- 2. Driveway easement needs to be reflected in the deed for lot 131-4; possibly this could be a condition of approval. However, it should at least be referenced as a note on the proposed drawing C2. (Sec VIII.B.13)**
- 3. The variance, date granted, and conditions of the variance should be depicted on the plan (Sec VIII.B.14)**
- 4. Proposed driveways and buildings for each lot to be specified on C2 (Sec VIII.B.17). Note that building envelopes should exclude septic leach field areas.**
- 5. Size and location of all proposed public and private utilities, including but not limited to water lines, gas lines, power lines, telephone lines, and cable lines should be depicted on proposed plan (Sec VIII.B.18). Water service pipes may need to be a certain distance from septic leach fields.**

6. **Underground utility easement needs to be depicted on plan for lot 131-4 Sec VIII.B.19)**
7. **Per Sec VIII.B.20. plan should depict stormwater drainage control plan, including location of catch basins, culverts and drains; method of storage and disposal; and calculations of volume and frequency of run-off." This is especially important given the topography of the land and the likelihood of increased stormwater draining from one parcel to another after homes are built. In addition, our Highway Department has indicated the following: "Drainage needs to be addressed. In the past, large puddles formed and flooded Maple Road and washed shoulder away."**
8. **Drawing should show results of test pit percolation tests (Sec VIII.B.25)**

Atty. Boldt explained the process of what happens to a deed when parcels are cut away from it. The deed remains as it were but reflects information of the portions that were culled from it. A new deed is not created which, he explained, may have caused some of the confusion as to the appropriateness of the existing deed. He also explained that only the owner of land can create easements on his land; an easement cannot be created by the owner of adjacent land who requires the easement for a drive way or other purpose.

Atty. Boldt suggested that the Board accept jurisdiction and act on the application and approve it with conditions. He addressed the eight (8) points referenced in the motion. Mr. Salomon noted that Atty. Boldt's responses were adequate in most of the issues with the exception that the stormwater drainage was a concern to him. The Board discussed having the Town Engineer review the Highway Dept. comments about potential drainage problems at the site.

Mr. Wilson suggested that the Board accept jurisdiction and move forward to process the application and get additional information as needed. He said that he felt the ZBA's decision was a circumvention of the spirit of the ordinance and that the Board should consider appealing the ZBA decision.

The vote was 0-5-1 with Mr. Todd abstaining on the motion that the Board not accept the application as complete based on information that was missing from the application.

Mr. Salomon moved and Ms. Day seconded the motion to accept jurisdiction on Case #03-50 (Cadillac Auto of Boston/Fuller) accepting drawings submitted to the Board dated May 3, 2004.

The vote was 5-0-1 with Mr. Todd abstaining to accept jurisdiction for Case #03-50.

Mr. Salomon moved and Mr. Kroner seconded the motion to authorize the Town Engineer to review drainage issues, erosion and sedimentation control with the applicant's engineer (Jonathan Ring) who would provide any necessary information.

Mr. Ring suggested a meeting with the Town Engineer and Highway Dept. Manager.

The vote was 6-0 (unanimous) to authorize the Town Engineer to review drainage issues, erosion and sedimentation controls with the applicant's engineer (Jonathan Ring) who would provide any necessary information.

Mr. Todd moved and Dr. Arena seconded the motion to continue Case #03-50 at the June 1, 2004 meeting.

The vote was unanimous (6-0) to continue Case #03-50 until June 1, 2004.

Mr. Wilson asked if the Board was interested in requesting a rehearing of the ZBA decision. Mr. Todd remarked that the minutes did not specify how the variance was met. Mr. Wilson noted that he felt both the hardship and spirit of the ordinance criteria were not satisfactorily met to grant the variance for relief from the frontage requirement of 175 feet.

Dr. Arena moved and Mr. Kroner seconded the motion to request a rehearing regarding the ZBA decision on Case #03-50.

Mr. Wilson suggested that the motion be tabled until the Board had the occasion to listen to the video recording of the ZBA case.

Dr. Arena moved and Mr. Kroner seconded the motion to withdraw the motion regarding requesting a rehearing of the ZBA decision on Case #03-50.

Mr. Salomon moved and Ms. Day seconded the motion to add the question of rehearing as an agenda item on the May 17, 2004 work session.

The vote was 6-0 (unanimous) to add consideration of a rehearing request as an agenda item on the May 17, 2004 work session.

New Business

Case #04-13 -- Map/Lot #003-080-000: 9 Lafayette Road, Halil and Melissa Ozkurt, 25 Spruce Lane, Stratham, NH 03885. Change of Use Application to operate a Subway restaurant at a facility that was formerly approved for retail use.

Atty. Bernie Pelech introduced himself to the Board in his capacity of representing the Ozkurts. Mr. Todd noted that the application was incomplete and queried why the application was submitted using drawings dated March 5, 2004 that did not reflect the latest changes dated April 23, 2004. Atty. Pelech referenced that the Board approved the site in 2003 for mixed use. Mr. Todd challenged that there was no "mixed use" category in the "Permitted Uses" of the zoning ordinance. Atty. Pelech noted that submitted site plan referenced a grease trap that indicated that a restaurant was anticipated. Mr. Wilson remarked that the original site plan approval was for retail space and the applicant requested approval for an "eating and drinking

establishment.” Mr. Todd also noted that the application should also include proposed parking and related calculations, proposed traffic flow if drive-up window is included and proposed sign information.

Atty. Pelech added that the applicant would provide recorded plans and address the issues raised by the ARC. Regarding a question asked about signage color, Mrs. Ozkurt noted it would be subdued yellow and dark green. She remarked that they would conform to the color standards established in the site plan review regulation.

Mr. Todd moved and Dr. Arena seconded the motion to continue Case #04-13 to the June 1, 2004 meeting.

The vote was 6-0 (unanimous) to continue Case #04-13 until June 1, 2004.

Case #04-14 -- Map/Lot #017-096-000: 179 Lafayette Road, One Seventy Nine Lafayette Realty, LLC, 179 Lafayette Road, North Hampton, NH 03862. Site Plan Review Application to construct a warehouse for outdoor power equipment sales. Applicant requests the following waivers: (1) Section VII. D. 3. High Intensity Soil Mapping, (2) Section IX. B. 1. Traffic Impact Analysis, (3) Section X. F. 3. b. 2) Building Material, (4) Section X. A. 1. NH-DOT Driveway Permit, (5) Section XIV. B. As-Built Plans, (6) Section X. H. Septic System Design.

Mr. Salomon recused himself.

Ms. Pohl was seated for Mr. Salomon.

Rick Philbrick addressed the Board. Mr. Dana Lynch (Civilworks Inc.) and Kevin McEneaney (McEneaney Survey Associates) were also in attendance. Mr. Philbrick submitted a letter from Joseph Fitzgerald, Giant Elevator Co., Inc, an abutter, who expressed support in favor of the applicant’s proposal. The letter was entered into the record.

Mr. Lynch addressed the ARC “Recommendations and Concerns” as listed in the ARC review memo dated May 4, 2004. He noted that he believed all of the comments could be clarified and required minor adjustments. Mr. Lynch said he talked with Ed Kelly, Town Engineer, and Mr. Lynch noted that he would provide the calculations and other information that Mr. Kelly has requested on the drainage issue.

Mr. Lynch addressed the RPC comments individually. He said all the review comments the applicant received were all good comments and he felt he had addressed them sufficiently. Mr. Lynch hoped that the Board would accept the application. He said the applicant requested relocation of the equipment-loading platform to the front of the storage building. The applicant would like to backup the delivery truck to a loading dock repositioned at the front of the building for ease of access and driving safety.

Mr. Todd reiterated his concern about the need to receive more complete applications. He questioned at what point the Board was willing to draw the line about the completeness of the

application. Mr. Wilson said that the Board should act on applications that address the substance of the application and make allowance for lesser items that can be easily addressed. Mr. Todd commented that once the Board accepted jurisdiction the application was considered complete and the 65-day processing schedule was triggered. The ARC had developed an application checklist and he would provide it to the Planning and Zoning Administrator for distribution to applicants to help them provide more complete applications.

Mr. Todd moved and Dr. Arena seconded the motion to table the application until the June 1, 2004 meeting.

Mr. Lynch said the applicant worked with the official checklist and subdivision regulations and commented that the review comments they received were positive remarks, but he felt that the application was complete. He restated that the applicant's urgency to move forward on the project was based on a critical business need and asked the Board to consider that factor.

Mr. Philbrick asked if the changes could be incorporated and the updated information presented at the Board's work session on May 17, 2004. Mr. Wilson indicated that the Board does not normally hear cases during their work session. Mr. Philbrick noted that he was agreeable to a tabling. Ms. Robinson noted that although she recommended acceptance in her review, she now rescinded that recommendation because other issues of incompleteness were raised.

The vote was 5-1-0 with Mr. Kroner opposed to the motion to table the application until the June 1, 2004 meeting.

Ms. Pohl retired from the Board.

Mr. Salomon was reseated.

Dr. Arena moved and Ms. Day seconded the motion to continue the meeting until 10:30 PM.

The vote was unanimous (6-0) in favor of the motion.

Case #04-15 -- Map/Lot #007-059-000: 51 Lafayette Road, Al's Seafood, 51 Lafayette Road, North Hampton, NH 03862. Site Plan Review Application to enclose an existing canopy. Applicant requests a site walk prior to the May 4, 2004 meeting.

Atty. Michael Ricker representing the applicant commented that they have been busy addressing the 15 previous concerns raised by the ARC and had now learned that there are additional comments to address. He commented that the applicant's business was an established business and he believed it warranted a slightly different site plan review.

John Chagnon, Ambit Engineering, addressed the Board stating that the applicant had a permitted use and he wanted to extend a three-season use into a year-round use. He remarked that the previous application was denied for 11 reasons. He noted that an abutter, Harley Seaton, had runoff/drainage issues with the applicant's site. Mr. Chagnon noted that the applicant had

attempted to remedy the abutter's concern. He noted that parking requirements were met and that the odor problem was addressed by the twice-weekly dumpster schedule.

Atty. Ricker remarked that the Health Officer in a previous situation determined that the applicant had exceeded the dumpster schedule requirement. He remarked that the dumpster enclosure requirement would be met. Atty. Ricker mentioned that the ZBA variance granted in June 22, 2001 required water testing from the Conservation Commission. Searching town files revealed that no water testing report existed. To clarify and remedy the situation, Corey Landry, Health Officer, submitted a letter dated April 26, 2004 confirming that water testing was conducted at the site and the problem with coliform bacteria concentrations were not caused by this site. Thus, the Landry letter established that the applicant had met the ZBA approval condition.

Mr. Chagnon noted that the applicant would install ADA-compliant bathrooms in the bump-out area on the north side of the canopy/pavilion. He distributed copies of a NH-DOT driveway permit. Mr. Chagnon commented that changing the existing driveway would be a mistake. He reinforced that Lafayette Crossing Mall engineers determined the current driveway design was the best approach for applicant's driveway.

Mr. Chagnon addressed ARC comments. Dr. Arena questioned the driveway permit application distributed to the Board. It specified a permit for a seafood market not a market and restaurant. He questioned the appropriateness of the driveway permit. Extensive discussion ensued about how to control parking on gravel parking area. Mr. Courchene commented that the plan showed sufficient parking spaces and his customers would park in a manner that was most convenient for them.

Mr. Courchene objected to enclosing the dumpster because excessive snow accumulation hampers snow removal. The Board agreed to an 8-foot high, 3-sided dumpster enclosure with an open side to the rear. An extensive discussion ensued regarding drainage and stormwater runoff issues. Harley Seaton, an abutter at 53 Lafayette Road, stated that he would approve the location of a berm between his and the applicant's site to deflect the runoff.

Mr. Salomon moved and Dr. Arena seconded the motion to accept jurisdiction and table Case #04-15 until the June 1, 2004 meeting.

Mr. Todd was concerned with the number of requirements for a completed application that had not been provided and accordingly he favored tabling the application. Mr. Kroner commented that he was surprised that the Board required a full site plan review, whereas at the previous meeting, the Board indicated it would not subject the applicant to that requirement.

The vote was 6-0 (unanimous) on the motion to accept jurisdiction on Case #04-15 and table the application until the June 1, 2004 meeting.

Case #04-16 -- Map/Lot #020-008/009/011-000 and 021-001-000: 223 Lafayette Road, P. D. Associates, LLC, 5 Dartmouth Drive, Suite #101, Auburn, NH 03032. (1) Subdivision Application to create 68 lots for the creation of a manufactured home retirement community. Applicant requests a waiver to Section XII. O. to permit placement of unit septic systems on the individual unit sites. (2) Voluntary Lot Merger Request to consolidate the aforementioned four (4) lots.

Ms. Day moved and Dr. Arena seconded the motion to continue the meeting until 11:15 PM.

The vote was 6-0 (unanimous) to continue the meeting until 11:15 PM.

Mr. Wilson stated that because of the lateness of the hour and the fact that the application would be very involved, he suggested scheduling a special meeting. Elmer Pease commented that he had received the ARC, RPC and Town Engineer (Altus Engineering) comments and were reviewing them. He distributed the following information to the Board:

1. NH RSA Section 674:31: Plan & Land Use Regulation for Manufactured Housing,
2. Aquarion Letter dated April 27, 2004,
3. Owners Affidavit,
4. Ambit Engineering Response [stamped 5/4/2004]
5. List of Facilities & Services Provided
6. Model Floor Plan
7. Easement Deed
8. Cross-section Diagram of Manufactured Home
9. Updated Site Plans dated 5/4/2004 [Sheets C5, C6, C7 and C8]

Messrs. Chagnon and Pease expressed concern about the Board's interpretation of (1) manufactured housing referenced in Section RSA 674:31 and (2) age restricted retirement community as defined under Federal Title VIII 3601 et seq and NH RSA 354:A-15.VI. Mr. Wilson commented that these and other issues would be discussed at the special meeting.

Mr. Kroner moved and Ms. Day seconded the motion to schedule a special meeting on Wednesday, May 19, 2004 at 4 PM and the applicant waived the 30-day notice requirement and confirmed he would notify abutters and provide the Board with the certified mail receipts.

The vote was 6-0 (unanimous) to schedule a special meeting on May 19, 2004 at 4 PM to hear Case #04-16.

Adjournment

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

The motion passed 6-0 (unanimously) to adjourn.

The meeting adjourned at 11:15 PM.

Respectfully submitted,

Krystina Deren Arrain
Recording Secretary/Planning & Zoning Administrator