



MEETING MINUTES

NORTH HAMPTON PLANNING BOARD

***Monday, November 7, 2005 at 6:30pm
Mary Herbert Room, 223 Atlantic Ave.***

Members present were: Phil Wilson, Judy Day, Laurel Pohl, Joseph Arena, Craig Salomon, Shep Kroner and Jon Rineman, Selectman Representative

Others present were: Jill Robinson, Circuit Rider/RPC and Wendy Chase, Recording Secretary.

Alternates Present: Rich Goeselt

Mr. Wilson convened the meeting at 6:35pm.

Old Business

Case #05:16 Map/Lot #007-53/056-000 33-49 Lafayette Road (I-B/R District) W/S North Hampton Properties, LLC (aka Lafayette Crossing Mall) for Site Plan and Subdivision Review for a Restaurant and Retail sales buildings.

In attendance for the applicant:

Attorney Bernie Pelech, Wholey & Pelech

Ed Vidra, W/S North Hampton, LLC

William Haskell, Gorrill-Palmer Consulting Engineers, Inc.

Tim Poole, Carrell, Poole and Yost

Mr. Wilson explained that these applications were before the Planning Board last month and it was determined that a variance was required which left the Board unable to accept jurisdiction or start deliberation. Attorney Bernie Pelech, representing the applicant spoke on their behalf and confirmed that the Variance for the 10' landscaping buffer was in fact granted by the Board of Adjustment on October 25, 2005. It was Attorney Pelech's wish that the Board take Jurisdiction of this application. Ed Vidra of W/S North Hampton Properties, LLC introduced himself, Tim Poole of Carrell, Poole and Yost and William Haskell of Gorrill and Palmer Consulting Engineers.

Mr. Haskell reviewed the changes subsequent to last month's meeting including traffic and pedestrian issues. Mr. Haskell stated that the original pedestrian crossing was removed as suggested by the Board. He went over discussions that took place at the site walk. The main discussion was the location of the main access. It was recommended by both the Police Chief and the Fire Chief that the main access road should remain as it is today. Mr. Haskell submitted a letter from NH DOT District Engineer, Douglas M. DePorter, stating that the existing Driveway Permit 06-345-601 issued on June 5, 2001

will cover the work proposed in Phase IV. Mr. Wilson requested input from the board on the traffic issues. Dr. Arena stated that he is not in favor of any ingress to the south lot as shown on parcel C on the plan. He feels that there are safety risks with the way it is designed. Mr. Wilson suggested a radius be added to the ingress to lot C. Mr. Haskell thought that could be done. Ms. Pohl suggested a no-entry sign be posted at the ingress to the proposed retail store access.

Mr. Poole of Carrel, Poole & Yost discussed the architectural aspects of the proposed restaurant. The signs on the building were discussed. The proposed sign on the front of the restaurant will exceed the 12 square ft. minimum by 6 square ft. The monument sign in the plaza does not have room on it for the restaurant so they may request permission for a 2nd sign on the building. Mr. Wilson asked what species of trees would be planted. They will plant honey locust trees, which are salt tolerant. The lighting plan was reviewed. The landscaping plan was reviewed. Three large trees will be relocated to provide a more visible view of the building.

Acceptance of jurisdiction for the subdivision application was discussed.

Mr. Kroner moved and Dr. Arena seconded the motion to accept jurisdiction contingent of the approval of the proposed subdivision plan.

The vote was unanimous in favor of the motion (7-0).

Mr. Salomon moved and Dr. Arena seconded to accept jurisdiction of the subdivision plan contingent on approval of a waiver of the 10' landscape buffer requirement in the Site Plan Review Regulations.

The vote was unanimous in favor of the motion (7-0).

Mr. Salomon asked if there were any conditions to the variance granted by the ZBA. Attorney Pelech answered that there were none.

Mr. Haskell explained that there is more than a 10' landscaped buffer around the entire parcel and felt that the ordinance was not written to include subdivided parcels to each have a 10' landscaped buffer around them.

Mr. Wilson opened the public hearing about the waiver request at 7:20pm.

Mr. Wilson closed the public hearing at 7:21pm with no comment from the public.

Mr. Salomon moved and Dr. Arena seconded the motion to approve the request for the waiver of the 10' landscaping buffer.

The vote was unanimous in favor of the motion (7-0).

Mr. Wilson opened the public hearing at 7:22pm on the subdivision plan.

Mr. Wilson closed the public hearing at 7:23pm with no comment from the public.

Mr. Kroner moved and Dr. Arena seconded the motion to accept the proposed subdivision plan with approved waivers.

The vote was unanimous in favor of the motion (7-0).

Mr. Salomon stated that the date of the variance granted by the ZBA was not on the plan.

Attorney Pelech stated for the record that no one was in opposition of the variance.

The Board asked for Ms. Robinson's comments. Ms. Robinson addressed the ordinance that states that windows should comprise no less than 5% of the exterior wall surface or portions of the buildings facing a public right of way, parking area, or any developed area. The exterior wall of the restaurant facing Shaw's does not include windows on the plan. The fence on the back of the proposed building is 10' tall. It was determined that false windows will be added to the back wall of the building. Ms. Robinson asked if they planned on applying for a variance from the sign ordinance. Attorney Pelech answered that they probably would.

Mr. Wilson explained that there was no formal request by the applicant to waive the Site Plan Review provision that no franchise-style awnings be used, but that it was the discretion of the board to vote on it. He asked for public input.

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

Mr. Wilson closed the public hearing at 7:24.5pm, with no comment from the public.

Mr. Salomon moved and Dr. Arena seconded the motion to waive the requirement that no franchise style awnings be used.

The vote was unanimous in favor of the motion (7-0).

Dr. Arena questioned the hours of operation. The restaurant plans to be open Monday through Thursday 11:00am to 1:00am and Fri & Sat 11:00am to 2:00am. Mr. Wilson pointed out that there was a typo on the application stating that the weekend hours were 11:00am to 2:00pm. The legal closing hour of operation in New Hampshire is no later than 1:00am. Mr. Vidra stated that the restaurant will close at 1:00am and employees will shut down until 2:00am on the weekends.

The site plan application was discussed. Mr. Wilson explained that this would be the opportunity to comment on the overall application.

Mr. Wilson opened the public hearing at 7:36pm.

A member of the audience asked if there would be entertainment. The answer was no.

John Morton asked if approved, what the estimated time would be for completion of the restaurant. The answer was next fall.

Mr. Wilson closed the public hearing at 7:38pm.

Mr. Salomon moved and Ms. Day seconded the motion to grant conditional approval of the site plan review application with the following conditions:

1. Recordable Mylar. The applicant shall submit a recordable Mylar of the approved plan with all required signatures and seal affixed.
2. Certificate of Monumentation. The applicant shall provide the Board with a Certificate of Monumentation, stamped and signed by the NH LLS certifying that all monuments depicted on the plan have been properly set.
3. Surety. Applicant shall post surety in a form and amount acceptable to the Town of North Hampton for the following:
 - a. Landscaping. An amount equal to 25% of the installed cost of all plantings to be held by the Town for two (2) growing seasons following completion of construction to ensure prompt replacement of any dead plantings. The Building Inspector from the Town's engineering consulting firm shall inspect site landscaping annually and recommend reduction of the amount of surety held, as appropriate.
 - b. Site Work. An amount sufficient to cover cost of:
 1. Construction and installation of improvements, including but not limited to costs associated with proposed driveways and parking lots, lighting, drainage and septic systems, and
 2. Preparation of the area proposed for commercial sites, including but not limited to removal of all refuse, demolition debris on the site.
4. Additional notes and information shall be added to the plan by the applicant as follows:
 - a. Applicant shall obtain all required variances for proposed signage and shall add information about those variances to the plan.
 - b. Date of the 10' landscape waiver granted by the Planning Board shall be added to the plan.
 - c. Variance granted by the ZBA for the 10' landscape buffer shall stand through the 30-days appeal period, and the date on which the variance was granted shall be added to the plan.
5. The footprint and use of proposed building on parcel C to remain the same. If the footprint or proposed use for dry retail space of the proposed building on parcel C is changed, applicant shall submit an application to the Planning Board for review of proposed changes.
6. Modification of the overall Site Plan
 - a. Applicant shall change the right-hand turn into parcel C by adding a more protruding "soft" point (extending approximately five (5) feet further west) and altering the driveway geometry to a radius rather than a straight line design.
 - b. False windows shall be provided on the plan on the east side of the restaurant to meet the 5% window coverage regulation.
 - c. Applicant shall add a no-left sign or do-not-enter sign for traffic moving westerly on the main drive approaching the access driveway from the main drive to parcel C.
 - d. Applicant shall add painted arrows on the pavement of the access road for traffic approaching from the northerly direction indicating that only left and right turns are allowed into the main driveway.
 - e. Applicant shall agree in writing that architectural elevations for buildings proposed on parcel C shall be submitted for review and approval by the Planning Board before any construction begins.

The vote was unanimous in favor of the motion (7-0).

NEW BUSINESS

Case #05:19 Map/Lot#007-150-000 225A Atlantic Ave, I-B/R Zone District) Thera Research, Inc., PO Box 890 North Hampton, NH 03862 for Wireless Telecommunications Facilities, a Distributive Antenna System (DAS) Conditional Use Permit/Site Plan Review.

In attendance for the applicant:

Attorney Peter Loughlin

David Maxson, Broadcast Signal Lab

Denis Kokernak

Attorney Peter Loughlin introduce himself, Dennis Kokernak, President of Thera Research, Inc. and David Maxson, a certified radio frequency engineer from Broadcast Signal Lab. Attorney Loughlin gave a synopsis of why the applicant came before the board. He reminded the Board that there are 2 telecommunication tower applications currently before the Zoning Board of Adjustment. The proposed tower on Woodland Road abuts his client, Mr. Kokernak's property. Attorney Loughlin explained that his client understands that there is a desire for increased improvement to wireless communication in North Hampton. Therefore, Thera Research Inc. is proposing a solution to provide wireless services for the North Hampton area and the ability to expand to accommodate the additional wireless services that are coming on line constantly.

Attorney Loughlin cited the Town of North Hampton's own ordinance under section 415, which states: **Alternative Tower Structure:** *Shall mean innovative siting techniques that include man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.* The town adopted this ordinance March 11, 1007. Attorney Loughlin passed out information regarding North Hampton Wireless Communications Ordinance Legislative History.

David Maxson delivered a PowerPoint presentation describing the Distributed Antenna System (DAS).

The system would require a central base station hotel that can house a multitude of wireless carriers. The property in mind is the old Rowell building on 225A Atlantic Ave. Fiber optic cables feed the central base station. The antennas are mounted on top of utility poles and connected to fiber. The system enables you to add antennas to increase capacity rather than add new towers.

Mr. Goeselt asked what the effective area for a single pole was. Mr. Maxson explained radius varies. Ms. Robinson questioned what would happen if North Hampton decided to put their utilities underground. Mr. Maxson explained that you would still need something above the ground to put the antenna on. Mr. Kokernak explained that it

already exists in another community. Ms. Pohl asked how the increased demand for service would affect the signal degradation. Mr. Maxson explained that you would need a stronger signal to cover bigger areas to get quality service. Mr. Salomon questioned the costs. Mr. Maxson explained the initial costs would be great but not as costly in the long run. Mr. Goeselt asked if a GPS antenna is a necessary thing? Mr. Maxson explained that there would be a stem on the Rowell building to support technology for 911.

Mr. Wilson explained that the board would first have to accept jurisdiction for the site plan application and to consider granting of waivers. The applicant had submitted requests for a number of waivers, but they had not been noticed. Mr. Wilson gave the applicant the opportunity to let the applicant withdraw the waiver requests rather than have the case reheard at another meeting. Attorney Loughlin requested that applications for waivers be withdrawn. Mr. Wilson asked that Attorney Loughlin submit something in writing to that effect following the meeting.

Dr. Arena stated that utility poles are not towers. The definition of tower in the zoning ordinance on page 26 was discussed.

Dr. Arena moved and Mr. Salomon seconded the motion to render the findings that the board does not consider the proposed utility poles to be towers and therefore the only waivers to be considered are those applicable to the base station hotel.

The vote was unanimous in favor of the motion (7-0).

Ms. Robinson does not agree with this approach. Alternative wireless structures in her opinion fall under the definition of tower in the town ordinance. Although a utility pole with an antenna is not a tower, it is still an alternative tower structure. She feels that this falls under the ordinance.

Mr. Wilson read over Section VIII 15 through 27 under site plan review regulations to ensure that the board understood the sections of the regulations that would have to be waived in order to accept jurisdiction for the application.

Dr. Arena moved and Ms. Pohl seconded the motion to waive the site plan review requirements Section VIII B 15 through 27.

The vote was unanimous in favor of the motion (7-0).

Mr. Wilson opened the public hearing on the application at 9:07pm

Jill Brandt of Atlantic Avenue requested clarification on the height of the antenna. She asked if it were true that of the five proposed nodes that some of them could have antennas up to 40'. Mr. Maxson confirmed that to be true. Ms Brandt also questioned the last sentence in ordinance 415.3. Mr. Wilson explained that there was a typo and the word Town should read Tower.

Mr. Wilson closed the public hearing at 9:11pm.

Dr. Arena suggested that, although the applicant had submitted a complete set of application materials, a site plan review is not applicable to the proposed use of the Rowell building. He feels that it should be a simple change of use. The building already exists and there will be no added changes to the structure and no changes to the use that affect parking or drainage or other matters that would indicate the need for a site plan review.

Dr. Arena moved and Mr. Salomon seconded the motion that this application be considered a simple change of use request and that a full site plan is not required.
The vote was unanimous in favor of the motion (7-0).

Mr. Wilson asked for public comment.

Mr. Kroner asked if there are any voltage risks to people. Mr. Maxon said that there was no risk of exposure to high voltage. Dr. Arena questioned whether or not there would be stand-by generators. Mr. Maxon replied that all wireless carriers have battery backup and that a stand-by generator was not required by equipment in the present proposal. Jill Brandt asked if there were any chance of radio frequency radiation causing health dangers to surrounding homes? Mr. Maxon stated that the FCC safety standards apply.

Mr. Salomon moved and Dr. Arena seconded the motion to grant the change of use specifically for the Rowell building.
The motion was withdrawn.

Mr. Wilson opened the public hearing at 9:22pm.

Ronnie Gourgeot of Juniper Road asked for clarification on the service provider. Mr. Maxon explained that Thera Research is a neutral host and leases out to wireless services.

Mr. Wilson closed the public hearing at 9:25pm.

Mr. Kroner moved and Dr. Arena seconded the motion to approve the site plan application as a change of use.
The vote was unanimous in favor of the motion (7-0).

Mr. Wilson went over a set of factors the board must adhere to. The Board went over the conditional use permit regulations.

Based on the board's having already determined that utility poles are not towers and that the proposed use of the Rowell building is a change of use because of the minimal impact on abutters, local traffic patterns and parking all of which were factors that were considered by the Board following action was taken:

Mr. Salomon moved and Dr. Arena seconded the motion to approve the conditional use permit after determining that utility poles are not towers and that the proposed

use of the Rowell Building requires only a change of use because of the minimal impact on abutters, local traffic pattern and parking.

Mr. Wilson opened public hearing at 9:30. There were no comments by the public.
Mr. Wilson closed the public hearing at 9:31pm.

The vote was unanimous in favor of the motion (7-0).

The board discussed the posting of a surety bond for antennas they put up and don't use.
Mr. Maxson explained that the owner has contractual obligations with the utility company where they would have to remove any antennas not in use.

Mr. Rineman moved and Ms. Day seconded the motion that the board will not require surety as long as the board, after review of the agreement with the utility company, is satisfied with this agreement between the owner and the utility company.

The vote was unanimous in favor of the motion (7-0).

Mr. Wilson asked for a motion to suspend from the rules to continue the meeting after 9:30pm.

Mr. Rineman moved and Ms. Pohl seconded to continue the meeting after 9:30pm.

The vote was unanimous in favor of the motion (7-0).

The members took a short recess at 9:40pm.

The meeting reconvened at 9:50pm.

Case #05:20 Map/Lot #012-48&066-000L 144 Mill Road (R-2 Zone District Leonard & Mary Saunders, 144 Mill Road North Hampton, NH 03862 to consolidate Tax Map 12, Lots 48 & 66, then to subdivide into 4 lots.

In attendance for the applicant:

Attorney Chris Bolt, Donahue, Tucker and Ciandella

Ms. Day recused herself from this case.

Mr. Goeselt was seated for Ms. Day

Attorney Chris Bolt from Donahue, Tucker and Ciandella spoken on behalf of his clients Mr. And Mrs. Saunders. Attorney Bolt stated for the record that the board should have received a revised set of plans this morning that incorporate the changes that were suggested by the ARC and engineer.

Attny. Bolt stated that both parcels lots 48 and 66 have been owned by the same owner since 1969. He submitted copies of the deeds for the record that reflects this ownership. They have received one tax bill for both parcels since at least 1974. The applicants are suggesting that the board first view this as a request for a back lot subdivision. This lot

configuration existed prior to March 10, 1992 as required by our ordinance 406.9. Attny. Bolt stated that the applicants are not seeking a variance but will likely request a waiver for underground utilities for the back lot. They are here only to request acceptance of jurisdiction.

Mr. Kroner asked if the 100' wetlands setbacks would be met on all created lots. Attny Bolt answered yes.

Mr. Wilson went over the requests of the applicants:

- Back lot subdivision
- Merger of lot 66 with back lot
- Adjustment of lot line for back lot just created

The end result would be four build-able lots.

Mr. Wilson stated that if the application does not meet the criteria of the back lot ordinance it would require a variance.

Attny. Bolt stated that the owners have been receiving one tax bill for both lots since at least 1974.

Ms. Robinson stated that the words of the statute do not address the situation of a lot merger. She had questions about the way the ordinance was drafted.

Mr. Salomon stated that the board was asked to approve a back lot subdivision first then the next step would be to create a merger.

The applicant requests acceptance of jurisdiction for a complete application. Acceptance of jurisdiction was discussed.

Mr. Salomon asked Ms. Robinson for her opinion whether or not everything was in order. Ms. Robinson commented that although it looked as if there were enough uplands, the amount of uplands were not shown on the plan. The applicant will add the amount of uplands on the plan.

Mr. Wilson stated that the two lots have been owned by the same person who receives one tax bill, which meets the spirit of the ordinance. He feels plan A2 qualifies for a back lot subdivision and if someone were to disagree with that they could challenge the decision with the ZBA. He explained that anyone could appeal a Planning Board interpretation of the ordinance to the ZBA.

Mr. Salomon moved and Dr. Arena seconded the motion that the board finds lots 48 and 66 have been merged de facto since 1974.

The vote was unanimous in favor of the motion (7-0).

The proposed driveways were discussed. Dr. Arena asked if the paved section on plan C2 would be removed. Attny. Bolt confirmed that it would. Ms. Robinson asked if the

driveway maintenance agreement would be included in the deeds. Attny. Bolt confirmed that it would be.

Mr. Rineman moved and Dr. Arena seconded to accept jurisdiction.

The vote was unanimous in favor of the motion (7-0).

Dr. Arena moved and Ms. Pohl seconded the motion to continue consideration of this application at the next meeting on December 5, 2005.

The vote was unanimous in favor of the motion (7-0).

**Case #05:21 Map/Lot #017-028-000:136 Lafayette Road (I-B/R Zone District)
Kristin Lowry, 60 Lafayette Road, North Hampton, NH 03862** for a change of use permit from a moving and storage facility to a heavy equipment sandblasting business.

In attendance for the applicant:

Attorney Bruce Marshall, Bedford NH

Attny. Marshall informed the Board that Ms. Lowry has entered into an agreement to buy the Cormier movers building, 60 Lafayette Road, North Hampton. Ms. Lowry wishes to obtain approval from the board for a change of use. Attny. Marshall explained that before the existing moving and storage facility occupied this building it housed a heavy equipment/sandblasting business. Attny. Marshall explained that his client utilizes a dust collection system and the sandblasting is conducted totally indoors. He added that there would be no significant changes to the building. Attny. Marshall requests on behalf of his client that the board waive the requirements for a site plan.

Ms. Robinson asked if there was an existing site plan on file. Attny. Marshall replied that there is a septic plan, which shows the footprint of the site on file with the Town.

Mr. Wilson asked Ms. Robinson if a special exception, which is granted, runs with land. Ms. Robinson was not sure. Mr. Salomon thought a special exception is a permitted use if certain conditions are met and each one is unique. Attny. Marshall feels that the special exception does run with the land. The Board would like more information such as noise level, traffic, hours of operation, dust, parking of heavy equipment etc. This information would be addressed in a site plan. Ms. Day feels that the board is not ready to accept jurisdiction without further information.

Mr. Wilson recapped on three major issues.

- A valid special exception is in question.
- It is not at all clear that a new operation will not create noise, dust and vibrations during hours of operation, which would be of major concern to surrounding abutters.
- There is not a site plan on record, which the Planning Board requires for all proposals that do not have a site plan on file.

Ms. Day moved and Ms. Pohl seconded the motion not to accept jurisdiction.

The vote was six (6) in favor, none opposed and one (1) abstention. Mr. Salomon abstained.

OTHER BUISNESS

Mr. Wilson distributed to each of the board members a copy of the 2005 community survey draft report.

Mr. Wilson went over the proposed 2006-2007 Planning Board budget. Wendy will make copies and distribute to each member. Wendy was directed to go over the proposed budget with Mr. Mabey and make any appropriate changes related to administrative items over which the board exercises no control or oversight.

Mr. Kroner moved and Ms. Pohl seconded the motion to adjourn at 10:55pm.

The vote was unanimous in favor of the motion (7-0).

Respectfully submitted,

Wendy V. Chase

Recording Secretary/Planning and Zoning Administrator