



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Tuesday, November 6, 2007
Mary Herbert Conference Room

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chairman; Shep Kroner, Vice Chairman; Joseph Arena, Laurel Pohl, Barbara Kohl, Tom McManus and Craig Salomon, Selectman's Representative.

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

Alternates present: Vincent Vettraino

Mr. Wilson called the meeting to order at 6:32pm and noted for the record that there was a quorum and that the agenda was properly posted.

Mr. Wilson suggested that the Board take up the first item under "Other Business" first due to the long length of the agenda.

Attorney Donahue of Donahue, Tucker & Ciandella, PLLC spoke on behalf of his client, Russell Jeppesen and requested from the Board a two-year extension of the conditional approval granted by the Board on November 6, 2006 for case #06:16, 7-lot subdivision.

Attorney Donahue explained and Mr. Wilson concurred that Mr. Jeppesen is working with the Town's Conservation Commission and North Hampton Forever in negotiating a transaction whereby the Jeppesen property would not be developed but would remain in its natural state under a combination of a conservation easement and transfer of development rights with an ultimate fee transfer to the Town by gift, and because this may be a lengthy process his client would like the extension.

Mr. Kohl recused herself from the vote because she is an abutter to the Jeppesen property.

Mr. Wilson had elected not to vote on matters related to this case from the first meeting at which the Board deliberated about it.

Mr. Salomon moved and Mr. Kroner seconded the motion to grant the requested two-year extension of the conditional approval granted by the Board on November 6, 2006 for case 06:16 – Russell Jeppesen, 7-lot subdivision.

Dr. Arena noted for the record "only if honesty absolutely prevails".

The vote passed (5-0-1). Mr. Wilson abstained.

07:19 - Paul & Phyllis Lamb, 129 Atlantic Ave., North Hampton. Subdivision Application and Conditional Use Application. The applicants propose a back-lot subdivision. Property location: 129 Atlantic Ave., North Hampton, zoning district R-2, M/L 006-083.

In attendance for this application:

John Chagnon, Ambit Engineering

Ed Bergeron, H.E. Bergeron Engineers

Paul & Phyllis Lamb, Owners/Applicants

Mr. Wilson listed the issues from the prior meeting:

- Bridges
- Blasting
- Conservation Commission, re: protecting Little River
- Shared driveway easement language

Mr. Chagnon explained that the latest plan submitted to the Planning Board included an easement plan that “ties in” with the proposed driveway easement deeds. He further explained that he submitted copies of a blasting protocol and that Mr. Bergeron has completed a preliminary plan for the bridge.

Mr. Bergeron went over the preliminary bridge plan with the Board. He commented that the existing abutments are in excellent condition and that the stones, which fell into the river, will be replaced into the abutments. He said that the finished bridge would support a GVW of 25 tons.

Mr. Salomon questioned what precautions would be taken to prevent material falling into Little River during construction. Mr. Bergeron said they would use silt fences in the River when pouring concrete and they may use sand bags and hay bales.

Town Engineer, Ed Kelly received a copy of the preliminary plan and will review and report back to the Board.

Ms. Robinson commented on the submitted blasting protocol and said that she had researched and found examples of blasting protocols that included certain RSAs and specific criteria such as scheduled times of blasting. She suggested that the Board might want to include such specifics in the blasting protocol.

Mr. Kelly commented on the importance of pre-blast surveys and recommended that the Board request it.

Mr. Salomon suggested that two notes be added to the proposed easement. (1) Restriction on chemicals used within the buffer and (2) utilities to be replaced should read *subject to all necessary permits when replacing them*.

Mr. Wilson commented on the Conservation Commission concerns such as (1) no use of chemicals, such as calcium chloride on the bridge surface or driveway, (2) driveway to remain pervious within the 100-feet wetlands setback and (3) to use all reasonable efforts and good engineering practice to prevent contamination into Little River. These notes will be added to the plan.

Dr. Arena questioned how icing of the bridge surface and driveway would be handled. Mr. Chagnon discussed it with Mr. Bergeron and they said they would use sand. The note to the plan would be changed to reflect approval of using sand for icing.

Mr. Wilson opened the public hearing at 7:16pm.

Mr. Wilson closed the public hearing at 7:16pm without public comment.

The Board determined that (1) they would like Ed Kelly to review the preliminary bridge plan and report back to them, (2) to have legal counsel review the proposed driveway easement language and (3) a review and report on the blasting protocol from Ed Kelly and the Building Inspector, Richard Mabey.

The Board took jurisdiction of the Lamb application on September 4, 2007 and they have 65 days from then to make a decision unless the applicant requests an extension.

The applicants requested an extension and put their request in writing.

Mr. Kroner moved and Mr. McManus seconded the motion, with the concurrence of the applicants, to continue case #07:19 – Paul and Phyllis Lamb to the December 4, 2007 Planning Board meeting with the following conditions: (1) Ed Kelly to review the proposed bridge plan, (2) the Town Attorney to review the easement language and (3) Ed Kelly and Building Inspector Richard Mabey review of the blasting protocol.

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

07:20 – Nicholas Birmbas, 830 Atlantic Ave., Hampton. Amended Subdivision Application. The applicant requests an amendment to the 2003 approved two-lot subdivision plan #D32476 to allow access to the buildable area on the lot with a driveway off of Post Road. Property location: 225 Post Road, North Hampton, zoning district R-2, M/L 022-014-003. This case is continued from the October 2, 2007 meeting.

In attendance for this application:

Scott Frankowietz, Beals Associates

Nicholas Birmbas, Owner/Applicant

Rob Phillips, Keach & Nordstrom Engineering

Mr. Salomon reminded everyone that Beals Associates is working for him but does not feel that there is a conflict so it was not necessary to recuse himself.

Mr. Phillips did the engineering review for the Town. He commented on the fact that this project will need an approved NHDES wetlands permit and a NHDOT driveway permit. He commented that he had some concerns with the drainage study especially that there is a significant amount of water draining on to the north side of the property from an abutting property. Mr. Phillips did not have prepared comments for the Board but said that he sent comments and concerns to Beals Associates and that Beals responded to his comments satisfactorily.

Mr. Wilson opened the public hearing at 7:40pm.

Chris Ganotis, 18 Deer Run Road, stated that he is an abutter to the Birmbas property and that his back yard has been flooded since 1994 and there has been nothing done to divert the runoff water since then. [Mr. Ganotis had submitted a letter to the Board that elaborated his concerns and the history of the drainage issue between his property and the Birmbas properties].

Ms. Pohl moved and Ms. Kohl seconded the motion to deny the amended subdivision application, case # 07:20 based on it's not proposing an improved situation for the existing drainage problem, access is already available to the lot from the approved subdivision plan, and they would have to cross the wetlands to install the proposed driveway against the advice of the Conservation Commission.

Dr. Arena made a friendly amendment to state that the applicant would have to revert back to the original plan in 1994. The friendly amendment was not accepted.

Mr. Kroner made a friendly amendment to add that it is not clear that the proposed plan will improve flooding on the adjacent property. Ms. Kohl and Ms. Pohl accepted the friendly amendment.

Dr. Arena argued that if the applicant were directed to revert back to the original plan of 1994, there would be no need for the aforementioned motion.

The vote passed (5-2-0).

Dr. Arena moved that in view of the sequence of events there was a breach from the original decision and the Planning Board should revert back to the original decision in 1994. There was no second to the motion.

The motion failed.

Mr. Wilson suggested that Dr. Arena bring up the topic at the next work session because it entails that the Board consider going through the process required to revoke an approval of a subdivision plan.

07:22 – Jerome Day, Jr., 153 Atlantic Ave., North Hampton. Subdivision Application. The applicant proposes a two-lot subdivision. Property location: 153

Atlantic Ave., North Hampton, zoning district R-2, M/L 006-144-000. This case is continued from the October 2, 2007 meeting.

In attendance for this application:

Jerome Day, Jr., and Jane Kerivan, Owners/Applicants
Matt Landrey, MSC Engineering
Ms. Kohl recused herself.

Mr. Wilson opened the public hearing at 8:28pm.

Mr. Day commented that he would prefer all documents refer to the driveway as pervious rather than gravel.

Mr. Kroner moved and Mr. McManus seconded the motion to approve the subdivision application with the following conditions:

- 1. Recordable Mylar with all required signatures and seals affixed**
- 2. A note shall be added to the plan stating that all sections of the driveway within the 100-foot wetlands setback shall remain pervious**
- 3. A note shall be added to the plan stating that the owners of Lot 6-144-1 shall be responsible for the cost of shared driveway construction and maintenance, including but not limited to snow removal, from its point of inception on the Northerly side of Atlantic Avenue to the Southerly sideline of Lot 6-144-2, and the owners of, Lot 6-144-2 shall be responsible for the costs of constructing and maintaining said driveway from its point of inception from the Southerly sideline of Lot 6-144-2 and extending to the location of any house to be constructed on said lot. (Lot numbers are referenced as depicted on the approved plan).**

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

07:23 – Simmons Trust, 74 Lafayette Road, North Hampton. Conditional Use Sign Application. The applicant proposes to erect an externally lit pole sign at 74 Lafayette Road, North Hampton, zoning district I-B/R, M/L 013-001-000. This case is continued from the October 2, 2007.

In attendance for this application:

Richard Batchelder, Applicant
Peter S. Simmons

Mr. Batchelder explained that he was applying for a sign permit and that any questions about the actual site would need to be addressed by Mr. Simmons.

Mr. Simmons submitted a copy of a letter from Peter E. Simmons, Trustee of the Simmons Trust, authorizing Mr. Simmons (Peter S. Simmons) to act on his behalf.

Mr. Wilson commented that the tax records show the ownership of 74 Lafayette Road as Simmons Trust, Eric W. & Dale H. Trustees.

Mr. Simmons stated that the correct Trustee for Simmons Trust is Peter E. Simmons with a mailing address of 54 Walnut Ave., North Hampton.

Mr. Salomon explained that even if the change to the Trust was recorded at the Registry of Deeds it does not mean that the Town has a record of the change.

Mr. Simmons argued that He and Mr. Batchelder were before the Board for a sign permit application not a site plan review.

Mr. Simmons said that the use has been there longer than zoning and is not a non-conforming use and there is no expansion of a use. He submitted an aerial photo prior to 1988 and clearly showed the property with vehicles on it. He read Mr. Mabey's memo into the record, which states: *Peter Simmons at my request has given a history of uses for this property to the best of his knowledge. My knowledge of the property begins in 2002 and is as follow: site review standards were adopted in October of 1983, the records indicate a variance was granted to sell used cars in 1981 (case 81:23) and since I have been building inspector this site has sold golf carts, vehicles and equipment and has been used as an auto repair garage. The use of this property predates the site review requirements and has been used continuously for auto, equipment, golf carts and other miscellaneous sales. The current equipment sales seem to be consistent with the existing uses.*

Mr. Simmons opined that there is not an expansion of a non-conforming use on the subject property.

Dr. Arena questioned how many different business owners there were at that location and Mr. Simmons said that he is the only owner of the businesses. Dr. Arena questioned why Mr. Batchelder was applying for the sign permit and that if Mr. Simmons were the owner of the tractor business then he should be the one applying for the permit. Mr. Simmons stated that Mr. Batchelder worked for him.

Mr. Salomon said that the Board should focus on the sign application. If anything changes with respect to the Building Inspector's opinion that the equipment sales seem to be consistent with the "grandfathered" use, then Mr. Batchelder and Mr. Simmons would be proceeding at their own risk.

Mr. Wilson said that it is not the Building Inspector's responsibility; it is the sole discretion of the Planning Board to determine whether or not a site plan or change of use review is required. He further stated that the principle issue is that the lot is a non-conforming lot, not a non-conforming use, because it is 0.8 acres and opined that it is incumbent upon the Board to decide whether to require a change of use or a site plan review of the property.

Mr. Salomon moved and Mr. McManus seconded the motion to accept jurisdiction of the Conditional Use Sign application, case #07:23 – Simmons Trust.

Mr. Salomon stated that the site plan review issue is distinct from the sign application and that the applicants would be proceeding at their own risk.

Mr. Wilson said that he sees the sign as evidence of the use that a non-conforming lot is being put to, which exceeds what that lot is reasonably capable of supporting regarding traffic and public safety and opined that the Board should require a change of use or a site plan review before considering a sign application on that site.

Dr. Arena agreed and suggested that the Board require a full site plan review on that site. He noted that not only did it appear that there were multiple uses on the non-conforming lot, but that an access easement for the Rite Aid site had been grant across the southeasterly corner of the lot. That access easement created traffic hazards, including motorists driving north on Lafayette Road who would make illegal turns into the Rite Aid site at that point of access. The site presents traffic and parking issues that the Board should review.

Mr. Simmons argued that there is nothing in the zoning regulations that says you need to have a site plan approval for a sign permit.

The vote failed (2 in favor, 4 opposed and 1 abstention). Mr. Kroner abstained.

Ms. Pohl moved and Dr. Arena seconded the motion to deny the Conditional Use Sign application based on the fact that it is an incomplete application without a current approved site plan or approved change of use for the property, Simmons Trust, case #07:23.

The vote passed (4 in favor, 2 opposed and 1 abstention). Mr. Kroner abstained.

Mr. Kroner explained that he abstained from the vote for the Conditional Use Sign application for Simmons Trust because he would first prefer a legal opinion from Town counsel on whether or not a sign can be separate from a use.

New Business

07:24 – Dr. Mark Windt, 65 Lafayette Road, North Hampton. Conditional Use Sign Application. The applicant proposes a 40” x 8’ reader sign. The applicant requests a waiver from 506.6 L. Special Event signs. Property location 65 Lafayette Road, Property owner: Rhone Properties, LLC, zoning district I-B/R, M/L 007-064.

In attendance for this application:

Dr. Mark Windt, Owner/Applicant

Dr. Windt explained the reasons for his request for a permit for the proposed sign.

The Board discussed the proposed sign as presented by Dr. Windt. It was the sense of the Board that the proposed sign was inconsistent with the fundamental purposes of the Sign

Ordinance to eliminate sign “clutter” and unattractive signs from the Industrial-Business/Residential District.

Mr. McManus moved and Mr. Salomon seconded the motion to grant the waiver request from 506.6.L. Special Event signs.

The vote failed (0 in favor, 4 opposed and 2 abstentions).

Dr. Arena moved and Ms. Pohl seconded the motion to deny the Conditional Use Sign application due to the fact that the waiver request failed.

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

07:25 – Paul McInnis, One Juniper Road, North Hampton. Conditional Use Sign Application. The applicant proposes a 35.83 square foot monument sign and requests the following waivers: Site Plan review Lighting Section X.F.3.b.7 and Section 506.6d. Property location: One Juniper Road, Property Owner: Kenellie Realty, LLC., zoning district I-B/R, M/L 17-26.

In attendance for this application:

Paul McInnis

Mr. Wilson excused himself from the meeting.

Mr. Kroner assumed the Chair.

Mr. Wilson returned to the meeting.

Mr. Kroner continued to Chair the McInnis case.

Mr. McInnis presented materials in support of his application.

The Board discussed his application and noted that the sign was very attractive and consistent with the standards for a monument sign, except with respect to the internal lighting and the proposed location. It was noted that the design of the sign was not conducive to downward lighting and that the internal lighting was likely not to be too obtrusive. It was also noted that the location would not impede sight lines at the Juniper road intersection and that the applicant -- at his own risk -- would be placing it within the potential 12-foot area for widening Lafayette Road.

The waiver request from Section 506.6.d was discussed. Mr. Salomon reminded Mr. McInnis of the proposed future widening of Route 1 by the State. Mr. McInnis confirmed that he was aware, and opted to take his chances.

Mr. Wilson moved and Dr. Arena seconded the motion to grant the waiver request Section X.F.3.b.7 to allow an internally lit sign.

The vote passed (6 in favor, 1 opposed and 0 abstentions).

Dr. Arena moved and Mr. Salomon seconded the motion to grant the waiver request Section 506.6.d to allow the sign to be placed 5-feet from the property line instead of the required 10-feet.

The vote passed (4 in favor, 3 opposed and 0 abstentions).

Mr. Wilson moved and Mr. Salomon seconded the motion to approve the Conditional Use Sign Application for Paul McInnis, case #07:25.

The vote passed (6 in favor, 1 opposed and 0 abstentions). Ms. Kohl opposed.

Ms. Pohl left the meeting at 10:00pm.

Mr. Wilson resumed the Chair.

Paul McInnis, One Juniper Road, North Hampton – request for a landscaping bond release minus 25% per condition of the approved site plan review for One Juniper Road, dated January 2, 2007.

In attendance for this request:

Paul McInnis

Mr. McInnis stated that all landscaping on the approved plan had been installed in accordance with the plan.

Dr. Arena moved and Mr. Kroner seconded the motion to grant the landscaping bond release minus 25% to be retained for a period of two years per condition of approval of the site plan for One Juniper Road, dated January 2, 2007.

The vote was unanimous (6-0).

07:26 – Crown Properties & Home Sales, 203 Lafayette Road, North Hampton. Site Plan Review Application. The applicant proposed an addition of 4,700 sf building to existing storage facility (same use). Property Location: 203 Lafayette Road, North Hampton, zoning district I-B/R, M/L 021-001-000-001.

In attendance for this application:

John Chagnon, Ambit Engineering

Mr. Chagnon explained that the Site Plan Review application was submitted and approved in 2002 but was never implemented and therefore has expired.

Mr. Chagnon explained changes from the 2002 plan with respect to the plan for storm water management. He pointed out the two leaching catch basins being proposed and the proposed leach field for excess storm water from the catch basins under the aisle between the proposed building and an existing building. He stated that the drainage study shows that the proposed management system will effectively handle the storm water in a one-hundred-year storm event.

Dr. Arena moved and Mr. Kroner seconded the motion to take jurisdiction of case #07:26.

The vote was unanimous (6-0).

Town Engineer Ed Kelly is in the process of reviewing the drainage study.

Dr. Arena moved and Mr. Salomon seconded the motion to continue case #07:26 to the December 4, 2007 meeting pending the Town Engineer's report on the drainage study.

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

07:27 – Shirley Carter and Charlene Genest, 206A & 206B Atlantic Ave, North Hampton. The applicants propose a lot line adjustment. Property location: 206A & 206B Atlantic Ave, zoning district R-1, M/L 007-077 and 007-079.

In attendance for this application:

Shirley Carter, Owner/Applicant

Charlene Genest, Owner/Applicant

The Board reviewed the plan and explained to the applicants that they would need a licensed surveyor to draw up a Mylar depicting the lot line adjustment so that it could be recorded at the registry of deeds.

Mr. Kroner moved and Dr. Arena seconded the motion to take jurisdiction of case #07:27.

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

Mr. Wilson opened the public hearing at 10:10pm.

Ms. Carter commented that eventually her son-in-law, Mr. Philip Thayer would own her property.

Mr. Wilson closed the public hearing at 10:12pm.

Mr. Salomon moved and Mr. Kroner seconded the motion to approve the lot line adjustment application subject to the applicant providing a recordable Mylar that shows the new lot lines which meets the minimum requirements for recording at the Registry of Deeds.

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

07:28 – Craig Salomon, 100 Woodland Road, North Hampton. The applicant proposes a two-lot subdivision. Property location: 100 Woodland Road, zoning district R-2, M/L 006-099. The applicant requests the following waiver: Section VIII.B.20 – Stormwater drainage control plan.

In attendance for this application:

Ken Berry, Beals Associates

Larry Morse, NHSC

Craig Salomon, Owner/Applicant

Mr. Salomon recused himself.

Mr. Wilson recused himself because he took a position on the subject at a prior ZBA meeting.

Dr. Arena recused himself because he took a position on the subject at a prior ZBA meeting.

Mr. Kroner assumed the Chair.

Mr. Vettraino was seated for Dr. Arena.

Mr. Kroner explained that the Applicant, Craig Salomon received a variance to the acreage requirement to subdivide his land and that certain abutters have filed a suit in Superior Court to overrule the ZBA's decision to grant that variance. Mr. Kroner asked Ms. Chase for an update on the legal opinion she was directed to seek.

Ms. Chase explained that she spoke with Attorney Bernie Campbell who is representing the Town in the lawsuit and he referred to RSA 677:9 that the filing of an appeal of a ZBA decision does not operate to suspend the decision. He suggested that the Planning Board deal with the application as they normally would and if the application should be approved he suggested that a condition of approval be added stating that the plan not be signed until the ZBA appeal is over.

Mr. Kroner stated for the record that the lot where Mr. Salomon's house sits carries a special exception for a home occupation and that the special exception runs with the land but would not be carried over to the new proposed subdivided lot.

The Board discussed the Applicant's waiver request from Section VIII.B.20 – Stormwater drainage control plan.

Mr. Kroner opened the public hearing at 10:30pm.

Mr. Shane Smith, 103 Woodland stated that he was speaking on behalf of Kari Schmidt and Mr. & Mrs. Dowd, as well as himself who are all abutters to the Salomon property.

Mr. Smith said that the Schmidts have a lot of water on their property and is concerned that by adding more development on the Salomon lot would cause an increase in water run off onto Woodland Road. He stated that the Board should not waive the stormwater drainage control plan requirement.

Mr. Berry explained that there will be a culvert under the new driveway and that the run off would continue to go into the same direction, which is back into the wetlands and stated that he is confident that a new building on the property would not change the flow of the runoff.

Mr. McManus commented that although he realizes that it is a sensitive issue it is not uncommon to request a waiver from the stormwater control plan for minor subdivisions such as this.

Mr. McManus moved and Mr. Vettraino seconded the motion to approve the waiver request from Section VIII.B.20 – Stormwater drainage control plan.

The vote failed (1 in favor, 2 opposed and 0 abstention). Mr. Kroner did not vote.

Mr. Salomon requested a continuation of his case #07:28 to the December 4, 2007 meeting. He will provide a drainage study prior to that meeting and forward a copy to Town Engineer, Ed Kelly for his review.

Mr. McManus moved and Ms. Kohl seconded the motion to continue case # 07:28 – Craig Salomon to the December 4, 2007 Planning Board meeting.

The vote was unanimous in favor of the motion (4-0).

Mr. Wilson resumed the Chair.

Mr. Vettraino stepped down.

Dr. Arena was reseated.

Mr. Salomon was reseated.

Mr. Wilson asked the Board to ratify his ruling to continue the meeting after the 9:30pm time in the Rules of Procedure at which no new business is to be heard by the Board.

Dr. Arena moved and Mr. Kroner seconded the motion to waive the 9:30pm time requirement and continue with the meeting.

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

Other Business

Attorney Peter Loughlin, on behalf of his client, Thera Research, requests an additional one-year extension of the Conditional approval granted to Thera Research for the Distributed Antenna System (DAS) on November 7, 2005.

In attendance for this request:

Attorney Peter Loughlin

Denis Kokernak

David Maxson

The applicant explained the need for this request. Carriers are not yet prepared to make commitments to filling gaps in North Hampton by way of the DAS, in part because they have placed antennas on towers in neighboring communities that have enhanced their coverage.

Dr. Arena moved and Mr. Salomon seconded the motion to grant the additional one-year extension of the conditional approval granted to Thera Research Inc. for the Distributed Antenna System on November 7, 2005.

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

Mr. Kokernak distributed copies of a development plan to each of the members for their review.

Mr. Wilson suggested that each member read the plan and invite Mr. Maxson, Mr. Kokernak and Attorney Loughlin to a future meeting to discuss it in more detail.

A motion was made and seconded to adjourn at 11:10pm with all in favor (6-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved February 14, 2008