



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Tuesday, January 8, 2008
"Old Town Hall"
231 Atlantic Avenue

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: None

Mr. Wilson convened the meeting at 6:36pm.

Old Business

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. This case is continued from the December 4, 2007 meeting.

Mr. Salomon recused himself.

Mr. Wilson recused himself.

Dr. Arena recused himself.

Mr. Kroner assumed the Chair.

In attendance for this application:

Attorney Peter Loughlin

Craig Salomon, Owner/Applicant

Mr. Kroner opened the public hearing at 6:55pm.

Mr. Kroner explained that after much review of the application and evidence provided by the applicant he discovered a possible technical issue with the application and requested the advice of Ms. Robinson and the other Board members.

Mr. Kroner explained his concern: The ZBA granted an area variance to the lot size requirement to allow a two-lot subdivision of a parcel with 3.881 acres but questioned whether or not the applicant should have also sought a variance to the wetlands setback requirement. He further explained that the Planning Board is being asked to create a new

lot of record where the existing building on that new lot of record falls within the wetland setback. The Planning Board is not authorized to create non-conforming lots and referred to Section 409.9 A & B – Buffer Zone Restrictions for undeveloped lots of record and developed lots of record.

Ms. Robinson opined that it seems to fall under the category of Developed lots of record, which reads: *No structure or impermeable surface shall be permitted within 100' of Tidal Wetlands or within 100' of Wetlands on any developed lot of record existing as of March 2003.* She also added that it is up to the Board on how they want to interpret the ordinance and deal with the issue.

Ms. Robinson said another consideration is determining the date the lot was created and determine what the setbacks were at the time, because the ordinance states developed lots of record existing as of March 2003 and if the lot was created prior to that date then the structure would be considered a “grandfathered” structure.

Mr. Kroner said that he is concerned that the Planning Board is being asked to create a new lot of record that would be non-conforming and although a variance was granted for the acreage requirement the existing structures on the new lot fall within the wetland setback and there has been no relief from that ordinance requirement from the ZBA.

Attorney Peter Loughlin explained that his applicant did not seek a variance to the wetlands setback because he didn't find it necessary for him to do that. He further explained that the existing home is a non-conforming structure presently because it is not 100-feet from the wetlands buffer and creating two lots is not going to make the structure any more non-conforming.

Mr. Kroner said that he is concerned that technically the Board would be creating a new lot of record and when the new lot of record is created, the lot would be non-conforming.

Attorney Loughlin disagreed and said that the structure is non-conforming and subdividing the lot would not change that nor would it make the new lot non-conforming.

Mr. Kroner said that his main concern is the technicality of it and whether or not the Board has the authority to create non-conforming lots; newly created lots with new dimensions that already include non-conforming structures.

Mr. Salomon stated that the legal description of his lot has not changed since the early 1900s and that the house was constructed in two parts; the first part in 1976, and the addition was done in 1986. He further added that he was uncertain as to when the garage was built, but a building permit was issued.

Ms. Robinson said that the house is an existing structure preexisting to this action and opined that it is a “grandfathered” use.

Mr. Wilson spoke as a member of the audience and referred the Board members to definition 30 on page 5 of the zoning ordinances that states *Non-Conforming Use: Non-conforming use is any use or arrangement of structures or land legally existing at the time of enactment of this ordinance or any of its amendments, which does not conform to the provisions of this ordinance*, and to section 501.2 on page 60 that states: *A non-conforming use may be continued but may not be extended, expanded, or changed unless to a conforming use, except as permitted by the Board of Adjustment in accordance with the provisions of this ordinance.*

Ms. Robinson commented that the lot would be changing, not the use.

Dr. Arena spoke from the audience and asked to speak without any interruptions and noted for the record that he was speaking strictly as a citizen of North Hampton and not as a member of any Board. Dr. Arena opined that from the municipal “grass roots” all the way to the Federal Government is over-lawyerized. Dr. Arena stated that the townspeople accepted and voted on the two acre requirement per lot and opined that the definition of the *Spirit of the Ordinance* criterion is what the majority of the townspeople want and at the very beginning by attempting to break up the parcel into two lots is a clear violation of the *Spirit of the Ordinance*.

Attorney Loughlin suggested that the case be continued so that the Board could obtain a legal opinion on Mr. Kroner’s concerns. Attorney Hogan agreed and requested that the Planning Board solicit an Attorney other than Attorney Bernard Campbell because he is representing the Town in the ZBA Superior Court case regarding the ZBA granting relief from Article IV, Section 406 to allow a two lot subdivision of a parcel with less than the required four acres to Craig Salomon, case #2007:12.

Mr. Richard Bettcher stated that he originally owned 3.88 acres of land in Town and that he bought enough additional land from an abutter to increase his lot to 4 acres so that he could subdivide his land into two parcels because he was aware of the 2-acre per lot requirement. He opined that the variance granted to Mr. Salomon creates a troublesome precedent.

The Board decided to seek a legal opinion and disperse the findings to both Attorney Loughlin and Attorney Hogan as soon as possible so they would have time before next month’s meeting to prepare.

Joanne Meyer from Cotton Farm Lane stated that she agreed with both Dr. Arena and Mr. Bettcher and that granting a variance to allow the subdivision of lots less than 4 acres is setting a dangerous precedent. She also commented on the proximity of the proposed home and said that it would be very close to the abutting Dow’s home.

Mr. Kroner responded by saying that under New Hampshire State law a property owner is allowed to see variances and special exceptions to zoning ordinances. He further stated that variances and special exceptions are granted by a number of different reasons and there is a process the applicant needs to go through in order to receive one. He opined

that he appreciates the concern about the impact on the Dows but it is important to also understand that under existing zoning today that it is possible for Mr. Salomon to erect an accessory building 15-feet from the property line without seeking Planning Board approval.

Mr. Kroner suggested that he would draft a letter with an attached copy of the Salomon plan and forward it to the Town's Attorney requesting a legal opinion.

Mr. McManus moved and Ms. Kohl seconded the motion to authorize the Vice Chairman to develop a question that highlights the issue to Town Counsel for consideration and response by the February 5, 2008 meeting. The vote passed (3 in favor, 0 opposed and 1 abstention). Mr. Kroner did not vote.

Ms. Pohl moved and Mr. McManus seconded the motion to continue case #07:28 – Craig Salomon to the February 5, 2008 meeting. The vote was unanimous in favor of the motion (4-0).

Mr. Wilson resumed the Chair.

Mr. Salomon was reseated.

Dr. Arena was reseated.

New Business

08:01 – Seacoast Harley Davidson, 17 Lafayette Road, North Hampton. Conditional Use Permit Sign Application. The applicant proposes to relocate the existing pylon sign closer to Lafayette Road (Route 1). Property owner: Black marble Realty Trust, Property location: 17 Lafayette Road, zoning district I-B/R, M/L 003-086. The applicant requests a waiver to Section X.F.3.b.7 – Lighting.

In attendance for this application:

Andrew Janiak, Director of Facilities, Seacoast Harley Davidson

Mr. Janiak explained that the owners of Harley Davidson wish to re-locate the existing pylon sign that is currently in front of the building 25-feet closer to Lafayette Road (Route 1) because the current location has restricted visibility due to the growth of trees and shrubs on the property. He further explained that the new location would meet the setback requirements and will not require changes to any drainage patterns or structures.

The applicant requested a waiver from the site plan review regulation for lighting.

Mr. Wilson commented that by re-locating the existing sign would mean that the sign would be materially altered and would have to comply with the present sign ordinance, Section 506.

It was determined that a section of the sign is neon, which is prohibited in the current ordinance. Mr. Wilson stated that the applicant would need to apply for a waiver request

to the prohibited neon sign section and the waiver would need to be legally posted as a public hearing. Mr. Wilson offered Mr. Janiak the opportunity to continue the entire case to the February meeting or the Board could deliberate on the waiver request and acceptance of jurisdiction now and deal with the neon sign waiver request and possible acceptance of the conditional use sign permit at the February meeting.

Mr. Janiak opted to continue with the lighting waiver request and acceptance of jurisdiction.

The waiver request to Site Plan Review Regulation, Section X.F.3.b.7 was discussed amongst the Board.

Dr. Arena stated that even though the sign will remain the same it is moving to a different location and must comply with the current sign ordinance and opined that the neon lit portion of the sign must go or be replaced with something that complies with the current sign ordinance.

Mr. Wilson stated that it might be an unreasonable request to have the owner change the internally lit sign to external downward lighting. He also added that if the owner were to change the neon lit portion of the sign to a wooden sign he would be in favor of that and the applicant would be able to proceed with the entire application this evening.

Mr. Janiak opted to file a waiver request for the neon sign for the February 5, 2008 meeting.

Mr. Wilson opened the public hearing on the waiver request to Site Plan Review Regulation, Section X.F.3.b.7 – lighting at 7:47pm.

Mr. Rick Fucci said that he agreed with Mr. Wilson that it would be unreasonable for the Board to request the owners to change the sign from internally lit to externally lit using downward lighting.

Mr. Janiak's daughter stated that she is okay with the sign remaining the same.

Ms. Kohl opined that it is a beautiful building and a nice wooden sign with downward lighting would be very appealing.

Mr. Salomon moved and Dr. Arena seconded the motion to take jurisdiction of case #08:01 – Seacoast Harley Davidson Condition Use Sign Application.

The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. Wilson abstained.

Mr. McManus moved and Ms. Kohl seconded the motion to continue case 08:01 – Seacoast Harley Davidson Conditional Use Sign Application to the February 5, 2008 meeting.

The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. Wilson abstained.

08:02 – Ricardo Fucci, 180 Lafayette Road, North Hampton. Site Plan Review Application. The applicant proposes to add two self-storage buildings to the existing storage facility. Property location: 180 Lafayette Road, zoning district I-B/R, M/L 017-086. The applicant requests the following waivers: (1) Section VIII.B.27 – Architectural rendering and (2) Section XII – Parking Requirements.

In attendance for this application:

Ricardo Fucci, Owner/Applicant
Carol Eaton, Altus Engineering

Ms. Eaton explained the changes to the plan that were suggested by the Town's Engineer, Ed Kelly.

- The original design incorporated one catch basin, which drained to the existing detention pond; two catch basins have been placed to direct more of the runoff into the basin as requested by KNA.
- The changes made have a negligible affect on the 2-year and 10-year storm events.
- A note has been added to the plan requiring the replacement in-kind and size of any disturbed arborvitae if they have not survived two complete growing seasons following construction.
- A typographical error referencing a landscape drawing has been removed from Sheet C-4.

Mr. Fucci said that he met with Fire Chief Thomas Lambert regarding the width of the access route. Mr. Fucci widened the route per the Chief's recommendation to allow emergency vehicles proper access.

The Board discussed the first waiver request from Section VIII.B.27 – Architectural rendering.

Ms. Eaton explained that architecturally the addition would reflect the current building and would require minimal lighting.

Mr. Wilson opened the public hearing at 8:07pm.

Mr. Wilson closed the public hearing at 8:08pm without public comment.

Dr. Arena moved and Ms. Kohl seconded the motion to grant the waiver request to Section VIII.B.27 – Architectural rendering.

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

The Board discussed the second waiver request from Section XII – Parking requirements.

Mr. Wilson opened the public hearing at 8:10pm.

Mr. Wilson closed the public hearing at 8:11pm without public comment.

Mr. Kroner moved and Dr. Arena seconded the motion to grant the waiver request to Section XII – Parking requirements.

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

Mr. Salomon moved and Dr. Arena seconded the motion to accept jurisdiction of case #08:02 – Ricardo Fucci Site Plan Review Application.

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

Dr. Arena asked Mr. Fucci if there were hazardous materials within the storage site and how he handles that type of situation.

Mr. Fucci said there are no hazardous materials and that they do their best to police the tenants comings and goings. He said that he is required to and has taken terrorist classes that teach people what to look for.

Mr. Salomon moved and Ms. Pohl seconded the motion to approve the Site Plan Review application, case #08:02 – Ricardo Fucci.

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

Dr. Arena moved and Ms. Pohl seconded the motion to adjourn at 8:20pm.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary