



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Tuesday, June 5, 2008
Mary Herbert Conference Room
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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, Selectmen's Representative.

Others present: David West, RPC Circuit Rider and Wendy Chase, Recording Secretary.

Alternates present: Vince Vettraino

Mr. Wilson called the meeting to order at 7:07pm and noted for the record that the agenda was properly posted.

Old Business

The board was in receipt of a letter from Heather Dudko, representing Ocean Subaru, requesting a withdrawal of case #08:06 for a conditional use sign application. The board considered the case to be closed.

#07:28 – Craig Salomon, 100 Woodland Road, North Hampton, NH. 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 April 1, 2008 meeting.

In attendance for this application:

Craig Salomon, Owner/Applicant
Attorney Peter Loughlin
Ken Berry, Beals Associates

Mr. Wilson recused himself.
Dr. Arena recused himself.
Mr. Salomon recused himself.
Mr. Kroner assumed the Chair.
Mr. Vettraino was seated for Dr. Arena.

Mr. Kroner reopened the public hearing on case #07:28 and asked that all comments be directed to the board only.

Mr. Kroner explained the procedures of the hearing.

Attorney Loughlin referred to the February 5, 2008 Planning Board meeting where feedback from the board members and abutters to move the building envelope was considered. Attorney

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Loughlin conferred with the Applicant and they decided that they would consider moving the building envelope, which would entail seeking a variance to the wetlands buffer setback. Attorney Loughlin then referred to a letter from Attorney Scott Hogan (representing the abutters) dated February 22, 2008 stating that the possible relocation of the proposed house site would be minimal, which would not provide substantive improvement for the Dows and would increase the visibility of the proposed house site to both the Smith-Reedy and Schmitz property.

Attorney Loughlin gave a brief history of the case:

- A variance was granted by the ZBA to the lot size requirement
- The Case was appealed to the Superior Court and ruled in the Applicant's favor
- The Case has been filed with the Supreme Court
- The issues brought up in the past such as traffic impacts, drainage impacts and wetlands impacts have been addressed by the Applicant.

Attorney Loughlin opined that all of the requirements for a two-lot subdivision have been satisfied under the North Hampton Zoning Ordinance and Subdivision Regulations.

Attorney Hogan, representing the abutters to Mr. Salomon gave a summary and opined that the applicant's emphasis is on the fact that he satisfies the technical requirements according to the Subdivision Regulations, and what the board's actual authority is regarding these types of applications, and quoted from the Subdivision Regulations Section V. B & D. He further stated that the board's decision must be lawful and independently reasonable. Attorney Hogan referenced his letter dated June 2, 2008 "no application be approved by the Planning Board unless the Board can *ensure that there will be no detrimental impact on the abutters, the neighborhood, or the environment of the Town.* He further pointed out that the technical requirements are a minimum not maximum requirement.

Attorney Hogan referenced RSA 677:15, which specifies that a Planning Board decision has to be both lawful and independently reasonable. He opined that the members have the authority to determine what is lawful and reasonable.

Mr. McManus asked if Attorney Hogan could provide a contrary fact pattern to the interest of public health, public safety or public welfare. Attorney Hogan could not provide one but quoted from the NH Practice Series, authored by Attorney Loughlin, "the beauty of a residential neighborhood is for the comfort and happiness of the resident intends to sustain the value of property in the neighborhood it is a matter of general welfare like other conditions that adds to the attractiveness to the community and the value of the residences located there". Mr. McManus asked for something specific to the Salomon property and Attorney Hogan offered the appraisal performed by Mark Stroman, a NH Certified Real Estate Appraiser who stated in his appraisal that he is not convinced that the development of the site would not be detrimental to the market value of the Dow's property.

Mr. Vettraino questioned why the appraiser did not provide a quantitative value. Attorney Hogan commented that it is the responsibility of applicants to bear the burden of proof.

Mr. McManus commented that he was not sure how much "power" the Planning Board actually had and that this case involves a lot of subjective reasons for denial but not objective reasons.

Attorney Hogan stated that the Legislature gave the Planning Board the power to provide for the harmonious development of the municipality and its environs.

Mr. Kroner commented that by denying applications based on the impact of the setback, the board could also deny other applications the right to prosperity based on the use of their property. Attorney Hogan commented that every case has its own unique situation.

Mr. McManus commented that the Planning Board should have some consistency when applying judgment to each case.

Mr. Kroner opened the public meeting to all those in for or against the application, and asked each individual to state their name and address and speak at the podium.

Phil Wilson, 9 Runnymede Drive – Mr. Wilson referred to Mr. Salomon's argument that the Planning Board may be "second guessing" the ZBA and commented that the Planning Board and Zoning Board are two different and separate boards and that the Zoning Board has no role in the Planning Board's subdivision regulations. He further stated that the Planning Board judges whether or not the applicant meets all of the regulations adopted by the board. He further opined that there was enough evidence to determine that approving the two-lot subdivision would create a detrimental impact on the abutters, neighborhood and Town. Mr. Wilson opined that the letter submitted by Mr. Salomon at the May 15, 2008 Work Session was both threatening and intimidating.

Rita Dow, 104 Woodland Road – Mrs. Dow said that she has lived in her home for 46 years and that there is only one place on Mr. Salomon's property where he can place a house and it would be 30-feet from her home and 400-feet from his existing home and asked the board to think about that.

Cary Schmitz, 101 Woodland Road – Ms. Schmitz commented that she purchased her home a couple of years ago with the knowledge that the property across the Street (Salomon property) was unsubdividable. She opined that approving the subdivision would create a detrimental impact. She further stated that it is up to the applicant to prove that it would not detrimentally impact the neighborhood and Town and not the abutters responsibility. She further stated that she is a Realtor and opined that building a house so close to the Dow's would diminish their property value and that approving the application would benefit only the applicant and not the Town or the abutters.

Craig Salomon, 100 Woodland Road – Mr. Salomon said that the purpose of zoning and subdivision regulations is to give everyone a "road map" and opined that it is a concept of fundamental fairness. He said that the public health, safety and welfare are the police power and that the board does not have authority over police power. He referred to the subdivision regulations where the board can promote the harmonious development of the Town, which traditionally means that the Town is divided into districts so that you don't have a gas station next to a residence. He said that his two-lot subdivision application conforms to the zoning

ordinances. He opined that it is the zoning ordinance that presents the problem not the subdivision regulations or site plan regulations.

Dr. Arena, 8 Dancers Image - Dr. Arena said that he is impressed with all arguments brought forth for this case. He opined that aesthetics, although subjective, do have a massive affect on value.

Attorney Hogan quoted the United States Supreme Court out of the NH Practice and Procedure series on land use, "Zoning is a complex and important function to the State, it may indeed be the most central function preformed by local government for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life". Attorney Hogan opined that that was the authority the Planning Board has and can exercise it how they choose.

Attorney Loughlin said that the theory brought forth tonight for the basis for denial has no legal basis. Attorney Loughlin stated that every single claim made by the abutters on the Zoning Board variance request was rejected in Superior Court. He said that Mr. Salomon's application complies with every single zoning regulation and every single subdivision regulation. He opined that the regulations are to be used as a "road map" for everybody. Attorney Loughlin submitted a copy of a section of case Ron Todd, et al vs. Town of North Hampton Planning Board into the record. Attorney Loughlin opined that if the board does not go by guidelines than the role of the Planning Board becomes arbitrary and the board for any reason can deny each application presented to them. Attorney Loughlin said he is not aware of a single case where the Court has said even though the requirements were met the application can be denied. Attorney Loughlin submitted a sketch depicting the distance between the building envelope on the Salomon property to be 83-feet from the Dow's home and the Elliot's home is shown to be much closer to the Dow's than that.

Ken Berry from Beals Associates submitted a copy of the subdivision approval from the State of NH into the record.

Lisa Wilson, 9 Runnymede Drive – Mrs. Wilson commented on the Court decision that upheld the ZBA decision on the Salomon case and said that it could have easily upheld the decision had it been in favor of the abutters. She opined that the Planning Board is entitled to use ~~it's~~^{its} own subjectivity as a co-equal board.

Mr. Kroner thanked everyone for their comments and reminded the board that is the Planning Board's obligation to enforce the laws of the Town whether the board believes the application is right or wrong based on personal feelings, and that personal feelings is not the basis in which the board renders decisions. The board must apply the Town's Zoning Ordinances and Subdivision Regulations. He further stated that in the Salomon case the board granted no waivers and the Applicant has received an area variance from the Town, which is now pending review via an appeal to the NH Supreme Court. The Superior Court in fact upheld the variance. The Applicant appears to have satisfied the technical aspects of the application, as well as satisfying comments from the Town's Engineer. Mr. Kroner quoted from the 4th memo from the Town's Engineer, "The Applicant meets the minimum technical requirements and the limits of the development of the lot are very tight as to what can be achieved".

Mr. Kroner voiced concerns over the accuracy of the wetlands delineation especially towards the eastern end of the proposed lot because it conflicts with the Rockingham County's map and soils map. Mr. Kroner requested more information on the process of how the wetlands scientist delineated the wetlands.

Mr. Kroner stated that the Applicant feels the application is complete and meets the Town of North Hampton's Zoning Ordinances and therefore should be approved and the abutters feel the applicant has not met the standards laid out in the Subdivision Regulations.

Mr. Kroner quoted the review standard in the Subdivision Regulation, Section V.D., *In reviewing subdivision plans, the Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the general public, and shall ensure that proposed development does not have a detrimental effect on the abutters, the neighborhood, and the environment of the Town.* Mr. Kroner commented on the appraisal submitted by the abutters that is contrary to the applicant's contention that there is no adverse impact on the abutter's property values. Mr. Kroner asked a rhetorical question "has the appraised value of the Dow's property been inflated because of the absence of a home directly next to them?" Mr. Kroner commented on the fact that the Legislative Body approved a 30-foot side setback requirement and the applicant meets that requirement.

Mr. Kroner opined that allowing a home in a residential zone that meets the technical requirements would not affect neighborhood aesthetics anymore than any other house that currently exists in that neighborhood.

Mr. Kroner commented on the public suggestion that the Salomon application was at odds with the Town's Master Plan. He said that the Master Plan is a vehicle that guides the land use regulations, but is not a document, which is meant to be application specific and quoted RSA 674:II.

Mr. Kroner opined that the Salomon application does not fall under "scattered and premature" development and read the definition under RSA 674:36.II.

Mr. Kroner reminded the board of the time deadline on making a decision on the case. He further explained that the board could choose to approve or deny or request an extension from the Board of Selectmen.

The board deliberated.

Ms. Pohl referred to the sketch submitted by Attorney Loughlin depicting the Salomon's building envelope and the distance it was from the Dows. She stated that she did not completely disagree with the sketch because it depicted a distance of 83 feet between the proposed building envelope and the front or east side of the Dow's garage, when the Dow's living space is really much closer than the sketch would lead one to believe. She noted that the Dow's living space, specifically of the porch is on the back or west side of the garage, is much closer to the proposed

~~building envelope, and estimated the distance to be, roughly, only 45 feet than the 83-foot distance depicted on the sketch.~~

Ms. Pohl opined that the ~~problem with the proposed site plan is the location and size of the building envelope and that the~~ discussion on the amount of frontage ~~that~~ the proposed lot has, is not germane to the discussion regarding the building envelope ~~pertinent information~~ because ~~the amount of frontage it~~ does not ~~thing to~~ change the location ~~or size~~ of the building envelope. She further added that there are unmitigated issues and that the building envelope could be made smaller, which would provide some relief from the backside of the Dow's garage where the patio is.

Ms. Pohl ~~disagreed with Mr. Kroner's comments on meeting commented on~~ the technical specifications ~~qualification~~ of the site plan ~~regulations~~ and said that the board should be able to ~~apply and exercise~~ judgment, and if not, ~~then~~ ~~a simple checklist and~~ the Application Review Committee would suffice for the Planning Board. She further stated that ~~the board should not consider each characteristic of the site on an individual basis. The Board needed to take into consideration all of the cumulative affects of the proposed application,~~ whether negative or positive, ~~need to be taken into consideration,~~ such as the neighborhood, area, wetlands, ~~and~~ abutters, ~~and all the unique characteristics of the lot, and application.~~

Mr. Vettrains questioned Mr. Kroner's comment on bringing in personal feelings.

Mr. Kroner opined that the board's personal feelings should not be the basis of rendering decisions and said that the board is charged with applying the law and if a motion is made in denying an application then the motion needs to provide reasons for denial and evidence that proves it.

Ms. Kohl said that she has reviewed the application thoroughly and read all of the Court cases pertaining to the application that she could find, she also said that she has viewed the site in all different types of weather conditions. Ms. Kohl requested more information from the applicant proving that the subdivision would have no detrimental impact on the abutters.

Both Ms. Pohl and Ms. Kohl opined that the proposed house is out of character of the neighborhood. ~~Ms. Pohl stated that her comments are not based on "personal feelings", and stated that the sudden appearance of a building in such close proximity to the Dow's would stick out like a sore thumb to any traveler rounding that corner on Woodland Road.~~

Mr. Vettrains commented on the appraisal done by Mr. Stroman and wished that it had quantified in either a dollar amount or percentage of the supposed decrease in value to the Dow's property.

Mr. McManus stated that a lot of mental energy has been put into this case. He commented that he too is concerned with the protection of "open space" and the aquifer, but the board also has to take into consideration the context of other cases they sat on, and referenced the Lamb application and the Day application.

Mr. Kroner echoed Mr. McManus comments on how much thought has been put into this application, he as well as the board have taken this case very seriously.

Mrs. Wilson commented on the remarks made by Mr. McManus regarding ~~the~~ Day and Lamb case and said that the abutters to those cases did not object to those applications.

Attorney Hogan commented that the focus should not be based entirely on detrimental impacts of property value but also impacts on use and enjoyment of property. He referred to two cases, Berube vs. Manchester and Todd vs. Town of North Hampton. He emphasized his earlier comments that the law gives Planning Board's the authority to use their own judgment and experience.

Mr. Kroner spoke of past cases presented to the board in the I-B/R district that had detrimental impact on traffic on adjacent town roads but it did not prevent the applications from being approved. He commented that since he has been on the board (six years) that the detrimental impact standard was never applied. He agreed that the Salomon case is a difficult and unique case.

Dr. Arena commented on Parliamentary Procedures, which gives the right to everyone on the board three choices, yes, and no or abstains.

Cary Schmitz said that the abutters can get a third party opinion on the detrimental affect to the Dow's property, but a specific amount to the impact is subjective. She explained that she moved to North Hampton because of the two-acre requirement. She said that quality of life is subjective and the townspeople elect the board to be their voice and to watch out for the best interest of the Town.

Mr. McManus said that he has not considered this case in terms of money, but rather in terms of the balance of an individual's rights to the property and community welfare and a consistent application of what the board has done in the past and what it will do in the future.

Ms. Pohl stated that each case should be looked at individually and that ~~the~~ board members need ~~s~~ to apply their own judgment regarding ~~to~~ the detrimental affect. She ~~opined-stated~~ that, in her judgement, the application has a detrimental impact on the neighborhood, the privacy of the abutters and the value ~~of~~ in their homes. The amount of which could be quite significant, and as such, it does not need to be precisely quantified. The mere existence of it having a detrimental affect is enough. She further commented that the proposed ~~house-building envelope~~ does not fit in that neighborhood because of the unique characteristics ~~of~~ the land. A site plan, with a building envelope of that size, wedges a structure too narrowly between the Dow's residence to the north and the wet area to the south. The wet area prevents a 5000 sq ft envelope from being sited in a location that is a more appropriate distance between the residences.

Mr. Vettraino agreed that it is detrimental based on the configuration of the lot.

Ms. Pohl said that this application would not set a legal precedent because a variance was granted on the Salomon lot. But, that approval of this site plan would establish a pattern for the

Planning Board, encouraging property owners to seek similar variances from the Zoning Board, and to cite this case as a model and standard for approval of proposed site plans that are just as awkward and which are designed to circumvent the spirit of the zoning ordinance.

Ms. Kohl agreed with Ms. Pohl.

The board called for a recess.

Mr. Kroner reconvened the meeting at 9:50pm.

Ms. Pohl moved and Ms. Kohl seconded the motion to deny the two-lot subdivision for case 07:28 – Craig Salomon for the following reasons: Based on the Site Plan Regulation V, Sections B and D [sic], due to the fact that there are unmitigated impacts specifically, the building site could be smaller and specifically due to the cumulative affects of the following: it is detrimental to the abutters, in that its uncharacteristic to the neighborhood, it diminishes the privacy of the abutters, diminishes open space in the neighborhood, increasing density in a small area, and it is not harmonious development.

Ms. Pohl stated that she was elected to do planning and apply the Zoning Ordinance on this board and in that she has to uphold her interpretation of the Zoning Ordinance and the Salomon 2-lot subdivision just does not fit.

The motion to deny the application carried (3 in favor 2 opposed and 0 abstentions). Mr. Kroner and Mr. McManus voted against.

Mr. Wilson was reseated and resumed the Chair.

Dr. Arena was reseated.

**Mr. Kroner moved and Mr. McManus seconded the motion to suspend the rule that the board will take up no new business after 9:30pm.
The vote was unanimous in favor of the motion (6-0).**

Other Business

**Ms. Pohl moved and Mr. Kroner seconded the motion to recommend to the Board of Selectmen the reappointment of Carolyn Brooks, 3-year term, Jenifer Landman, 3-year term and Jane Palmer, 1-year term to the North Hampton Heritage Commission.
The vote was unanimous in favor of the motion (6-0).**

Dr. Arena thought that the Board of Selectmen had already reappointed the Heritage Commission members. Mr. Wilson suggested that the board take up the discussion on appointments of Heritage Commission members at the next Work Session. He suggested looking into making it strictly a Planning Board role or solely the Board of Selectmen's role.

Mr. Salomon was reseated.

New Business

#08:08 – Le Chat Savage, LLC, 215 Lafayette Road, North Hampton, NH. Site Plan Review Application. The Applicant, Cory Nadilo, Wings your Way Restaurant, 4 Conley Rd., Atkinson, NH 03811 proposes a two-phase project, (1) to expand the parking and add a deck, and (2) add more parking and landscaping. Property location: 215 Lafayette Road, zoning district I-B/R, M/L 021-003. The applicant requests the following waivers from the Site Plan Review Regulations: (1) Section IX.A Erosion and Sedimentation Control Plan, (2) Section X.B.1 Gravel parking in lieu of pavement, and (3) Section VIII.B.20 & X.C.2 Stormwater Calculation.

In attendance for this application:

Cory Nadillo, Owner of Wings your Way

Andrew Nowacki, MSC Engineers and Land Surveyors

Mr. Nadilo explained that his original plan was to expand the parking lot into two phases and to add a deck for outside dining and decided to eliminate phase II and the deck at this time and just apply for phase I, adding 19 additional parking spots in the back of the lot. He further explained that they would be gravel with cement stoppers in front of each spot.

Mr. Nowacki explained that based upon the revised application requesting the 19 additional parking spaces they withdrew the waiver request for Section IX.A Erosion and Sedimentation Control Plan.

Discussion ensued regarding whether or not to keep the deck as part of the proposal or reapply at a later date when Mr. Nadilo is ready to add the deck. It was explained to Mr. Nadilo that if approved he would have two years from the date of approval to construct the deck. Mr. Nadilo decided to keep the deck as part of his proposal.

Mr. Nowacki confirmed that the isle width of the parking spaces is 22-feet. He also explained to the board that he had met with the Building Inspector, Richard Mabey and was advised by him that it would be beneficial for them to use gravel instead of asphalt for the spaces because it is pervious.

Mr. Wilson questioned the measurement of impermeable surface for the gravel surface. Mr. Nowacki said that based on the soil type the measurement would be between 87 and 89. He further stated that the soils at the subject site are very well drained soils.

Mr. Salomon voiced two concerns (1) whether or not it would be wise to use gravel instead of asphalt because the soils drain so well and that leaks of petroleum from vehicles would be drained directly into the ground and (2) looking into the future regarding connecting the abutting properties it may be better to use pavement, which would be a better vehicle to use than gravel.

Mr. Nadilo pointed out that if asphalt is used and there are leaks of petroleum, rain would eventually wash it off into the ground.

The waiver request from Section X.B.1-Gravel parking in lieu of pavement from the Site Plan Review Regulations was discussed.

Mr. Wilson opened the public hearing at 10:20pm.
Mr. Wilson closed the public hearing at 10:21pm without public comment.

Mr. Kroner mentioned RPC Circuit Rider, David West's comment on how gravel gets moved around a lot during plowing in the winter.

**Dr. Arena moved and Ms. Kohl seconded the motion to grant the waiver request from Section X.B.1 of the Site Plan Review Regulations.
The vote was unanimous in favor of the motion (7-0).**

The waiver request from Section VIII.B.20 & X.C.2 – Stormwater Calculation from the Site Plan Review Regulations was discussed.

**Mr. Wilson opened the public hearing at 10:26pm.
Mr. Wilson closed the public hearing at 10:27pm without public comment.**

**Mr. Kroner moved and Dr. Arena seconded the motion to grant the waiver request from Section VIII.B.20 & X.C.2 of the Site Plan Review Regulations.
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 #08:08.
The vote was unanimous in favor of the motion (7-0).**

Mr. Wilson commented that the board needs to go through the Circuit Rider and Engineers comments carefully and suggested that the case be continued to the next meeting.

**Mr. McManus moved and Mr. Salomon seconded the motion to continue case #08:08 to the June 19, 2008 Work Session meeting.
The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. Wilson abstained because he will not be in attendance at that meeting.**

The Bocko case #08:03 was discussed. Mr. Wilson reminded the board that they did not take jurisdiction of their Conditional Use Permit Application for the following reason:

- (1) The application failed to meet requirements of Section 409.10, Subsections A and C. The application did not meet these requirements for the following reason: The applicant did not demonstrate that the proposed means of access to the buildable area of the lot was "essential to the productive use of land not within the wetlands." Alternative access may be possible and may require less wetland disturbance from the applicant's abutting property at the southwesterly corner of the lot that is the subject of this application.**
- (2) Ownership is in question with respect to the 50-foot right-of-way from River Road that is the initial segment of the proposed driveway. The applicant presented insufficient evidence for the Board's consideration to resolve this question.**

The Applicant filed an appeal with Superior Court represented by Attorney Bernard Pelech. Attorney Bernard Campbell is representing the Town. Attorney Pelech has filed a Temporary Stipulation with the Court, which would extend the scheduled Court case up to 90 days in order for the Bocko's to go back before the Planning Board with the evidence to satisfy the issues raised in the denial process. Attorney Pelech has also requested that application fees be waived for the new hearing.

Dr. Arena moved and Mr. Kroner seconded the motion to agree to the Temporary Stipulation and the Applicant to provide sufficient funds for renotification of abutters. The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. Salomon abstained.

A motion was made and seconded to adjourn the meeting at 10:45pm with all in favor (7-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

| [Approved as amended 12/16/2008](#)