



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, May 7, 2009
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, Barbara Kohl, Tom McManus, and David McGilvary.

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

Members Absent: Laurel Pohl and Michael Coutu, Select Board Representative

Mr. Wilson convened the meeting at 7:04pm, and noted for the record that the agenda was legally posted.

08:14 – James G. and Karen S. Confalone, PO Box 415, Rye Beach, NH 03871. (Subdivision Application) The applicants propose a 3-lot subdivision on contiguous land located in Rye, NH and North Hampton, NH. Property owners: James and Karen Confalone. Property location: 41 Causeway Road, Rye Beach, NH, M/Lots 005-012, 013, and 014, zoning district R-2. This case is continued from the April 2, 2009 meeting.

In attendance for this application:

James Verra, James Verra and Associates, Inc.
Attorney Timothy Phoenix, Representative to the Applicant
James Confalone, Owner/Applicant
Eric Weinrieb, Altus Engineering, Inc.

Mr. Wilson explained that Ms. Chase informed him that the Confalone's engineering surety account was depleted and another invoice was on its way from KNA. He informed the Applicant that as a requirement of the application process, the surety account would need to be replenished before the Board could go forward with his application. Mr. Confalone did not have his check book with him but was willing to drop off a check the next day.

Mr. McManus Moved and Dr. Arena seconded the Motion to waive the application requirement with the condition that Mr. Confalone will pay by check, the amount to cover the engineering fees, tomorrow.

The vote passed (3 in favor, 1 opposed and 1 abstention). Ms. Kohl opposed and Mr. Wilson abstained.

Mr. Weinrieb presented a watershed plan and went over it with the Board; it showed the proposed septic areas, building envelopes, rooflines and driveways, and explained that the plan represents a developed impervious area of 5,000 square feet which includes the house, patios, and driveways. He said that they would be recommending the use of ~~impervious~~-pervious pavement and pavers for the driveways. He added rain gardens to the plan and commented that there would be no adverse affects in North Hampton and that Keach and Nordstrom Engineers agreed.

Mr. Weinrieb read some of his responses to Rob Phillips' (Engineer from Keach and Nordstrom) review:

- No gutters or roof drains be installed on the houses. All of the roof runoff should discharge directly into a stone drip edge that borders the foundation.
- The area immediately adjacent to the development on both lots 2 and 3 will be maintained as lawn.

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- On lot 2, the rear portion of the site is designed to sheet flow off the roof and parking lot into the lawn which reduces temperature, velocities and volume prior to discharging into the poorly drained soils in North Hampton.
- Proposes the use of rain gardens in three locations to further treat the runoff prior to discharge from the developed areas in Rye to the land in North Hampton.

Attorney Phoenix asked that the Board consider approving all of the building in Rye subject to most of Rob Phillips' comments excluding the proposal that an area be bounded by a line starting 100-feet from the frontage of Causeway Road along the common lot line of Lot 1 and 2, extending to the future bound at the bend in the common lot line of lots 2 and 3 and then extending to the frontage of Causeway Road, 75-feet south of the town line; to the jurisdictional wetlands be maintained as "meadow" by mechanical means only, minimum vegetation height of 6 inches, and no fertilization. Attorney Phoenix said that the proposal is unreasonable because there is nothing being built in North Hampton, and his clients do not agree with the condition.

The Board voiced the following concerns:

1. The Board wants to fulfill its obligation to the Town to ensure that the proposal is not detrimental to the Town, and that the wetlands are protected.
2. The Board wanted proof to ensure that the land in North Hampton would not be affected by the proposal.
3. The proposed "rain gardens" on the plan are a good addition to it but they are not legally binding.
4. Ms. Kohl said she is concerned that something will be built on the property that is not on the conceptual plan and by the time someone realizes it, damage will have been done to the wetlands and the Board will not have any control over [it](#).
5. Protection needs to be afforded to the entire eco-system in that area.
6. The treatment of stormwater runoff is a use of the land in North Hampton.

Mr. Phoenix said that concern over the wetlands is a legitimate concern. He commented that the golf course across the street negatively affects the wetlands more than two new houses would. Mr. Phoenix said that Mr. Confalone inadvertently excavated some of the area on the lot that led to a NH DES issue that has since been resolved. Mr. Confalone created a wetland when he put the top soil back in the area ~~that~~ [where](#) he put it. He hopes that someday the State and/or the Town would let him put it back the way it was originally and possibly create a developable lot [that would be entirely within the Town of North Hampton](#). Attorney Phoenix said it's not right for any Town to take that right away. Mr. Phoenix said that his clients are concerned with the recommendation from KNA for a permanent restriction to keep a portion of the lot as meadow.

Mr. Phoenix read a section from RSA 674:53, *An owner of contiguous land in more than one Municipality and treat such contiguous land as a single lot for the purposes of this title notwithstanding the municipal boundary lines provided that all uses of land, buildings or structures comply with the regulations or ordinances of the Municipality where they are located.*

Mr. Confalone referred to Zoning Ordinance Section 409.5.A, *any use otherwise permitted by the Zoning Ordinance that does not include erection of a structure and does not alter the surface configuration of the land by the addition of fill or by dredging*. Mr. Phoenix said that his clients are not doing anything there, so they feel they have the right to leave the land as it is right now without any restrictions from the Board.

Mr. Phoenix referred to the court case [Churchill Realty Trust v. Town of Dover Zoning Board of Adjustment](#) where the Supreme Court ruled that if there are no improvements made in Dover there is no expansion of a non-conforming use in Dover, zoning enactments of a municipality are limited to its territorially boundaries and are invalid to the extent that they seek to impose zoning regulations and restrictions on land outside City limits.

Attorney Phoenix read the court stipulation in the Superior Court Case James Confalone & Karen Confalone vs. Little Boar's Head Planning Board:

1. Approval is conditioned upon the homes on Lots 2 and 3 being located in Rye and the existing house on Lot 1 remaining in Rye.
2. No new structures may be built on any or all of Lots 1, 2 or 3 in Town of North Hampton without first seeking approval from the Little Boar's Head Planning Board and any other approvals which might be necessary or required. Such requests and approvals shall be considered in good faith and pursuant to provisions of state law, including the right of appeal of adverse decision.

Dr. Arena suggested that the Applicants build in Rye and put the land in North Hampton in Conservation. Mr. Phoenix said that his clients don't want to put the land in conservation.

Dr. Arena said that the Planning Board should notify Rye Beach District of its intentions, goals, and requests. Mr. Phoenix agreed.

Mr. Wilson suggested that an environmental impact study be conducted by Dr. Leonard Lord on the Confalone property and get real data ~~on~~ about the impact ~~of~~ on the wetlands in North Hampton if the lots in Rye are developed. The Board agreed.

Mr. Wilson opened the Public Hearing at 8:11 p.m.
Mr. Wilson closed the Public Hearing at 8:12 p.m. without public comment.

Mr. Kroner and Mr. McManus agreed that they would consider approving the subdivision if the Applicants agree to the condition made by Keach and Nordstrom regarding the portion of the lot to be maintained as "meadow" by mechanical means only.

Mr. Wilson, Dr. Arena and Ms. Kohl agreed that an environmental study should be conducted to report the ~~affects~~ effects to the wetlands from the golf course as well as proposed development on the lots on the Rye side.

Mr. West said that he has concerns about approving a plan that was just received where the Board has not had reasonable time to review it.

Dr. Arena Moved and Ms. Kohl seconded the Motion to continue case #08:14 – James and Karen Confalone to the June 4, 2009 Meeting with the caveat that an environmental study be conducted on the area.

Mr. Phoenix requested a five minute recess to confer with his clients.

Mr. Wilson called for a recess at 8:15 p.m.
Mr. Wilson reconvened the Meeting at 8:20 p.m.

Attorney Phoenix said that Mr. Confalone is hesitant to pay for any additional studies the Board wanted to have done.

Mr. Weinrieb asked what the Board would like involved in the study.

Mr. Kroner made a friendly amendment that the Board simply continues the case to June 4, 2009.

Dr. Arena did not accept the friendly amendment.

The vote passed 3 in favor, 2 opposed, and 0 abstentions.

Mr. Wilson suggested they consult Dr. Lord and get an estimate from him on how much an environmental study would cost.

The Board agreed to authorize Mr. Wilson to contact Dr. Lord to ask him to estimate the cost involved in an environmental study of the Confalone property and to articulate exactly what the Board is looking for in such study.

The Board took a five minute recess.
The meeting was reconvened.

Mr. Wilson noted that Ms. Pohl had not arrived and seated Mr. McGilvary for Ms. Pohl.

09:02 – Peter Horne, Trustee F.S. 123 Nominee Trust, H.T.L.A.E.H., Nominee Trust. (Subdivision Application) The Applicant proposes a 3-lot subdivision. Property owner: F.S. 123 Nominee Trust, H.T.L.A.E.H. Nominee Trust, Peter Horne Trustee, PO Box 1435, North Hampton. Property location: 110 & 112 Mill Road. M/L 006-147-2 and 006-147-3, zoning district R-2. This case is continued from the April 2, 2009 meeting.

In attendance for this Application:

Attorney Bernard Pelech, Wholey & Pelech Law Offices
Steve Oles, MSC Engineering
Peter Horne, Owner/Applicant

Mr. Oles explained that the Applicant is proposing a two-lot subdivision with a lot line relocation and the proposed lots will have the required frontage and acreage.

The Board questioned Mr. Oles about the existing heated garage and whether it was going to be used as a residential unit or a commercial unit. Mr. Oles stated that it was a heated garage with an office above it. He further stated that the existing accessory structures would be accessory buildings to future main buildings if the subdivision is approved. He explained that the structure on the plan exists because NH DES requires a proposed structure be depicted on the plan as part of the septic system approval process. He said that the debris on the lot was where the trees were cleared to put in the septic system.

Mr. Wilson shared three concerns with the proposed:

1. By subdividing and selling the lots, who is currently and who will be responsible for the maintenance of the dam? He expressed concern that full responsibility for maintenance would fall to the owner of the one proposed new lot. Mr. Pelech said that now the responsible parties are those who own all the lots where the dam lies. Mr. Pelech indicated that his client would accept a condition that requires that all lots in the subdivision share responsibility for maintaining the dam in the future. Mr. Oles said that if this condition can be put in as a deed restriction on each lot. Mr. Horne said that he spent about \$200,000 to restore the dam, and that a maintenance plan is set up as a requirement of the NH Dam Bureau. Mr. Wilson said that Mr. Horne has been extremely responsible in the restorations he has done to the dam. Mr. Wilson said the Board has to assess what the impact of the proposal will have on Mill Pond, the dam, and everyone below it. Mr. Wilson suggested that it would be more reasonable to allocate the responsibility of maintaining the dam across all four of the lots.
2. It is clear that the Applicant is moving toward a cluster of four residences all to share a common driveway. Mr. Wilson asked if the Applicant would be willing to designate the shared driveway as a private road. He explained that a requirement of designating a private road is that the Applicant would need to sign a waiver of responsibility to the Town for any liability that may arise. Mr. Pelech said that they would be agreeable to that.
3. Concerned of the Concerns about the overall impact on the environment that would be created by more intensive use of the land by allowing the subdivision.

Mr. Wilson said that the Board would like to assess what the impact of pre-1988 of the intense use of the property in a way that would not be permitted today so the Board can look at what has to be done to mitigate that overall impact of development of the land in order to get the opportunity to use create another

lot. He would like it proven that the current structures that encroach upon the 100-foot wetland setback are not deleteriously impacting Mill Pond, Little River or the wetlands (esp., Little River Salt Marsh).

Mr. Pelech said that that was an unreasonable request of the Applicant. He said that it bears no relationship as to the proposal before the Board.

Mr. Wilson said that if the study shows that the current structures are having an effect on the aforementioned natural resources but shows a plan on how to mitigate existing effects as well as the marginal effects of any new development, then everyone "gains".

Mr. Pelech said that he would not recommend his client to do that but would discuss it with him. He said that there are Statutes that say you can not apply zoning retroactively.

Mr. Wilson opened the Public Hearing at 9:14 p.m.

Mr. Field introduced himself and disclosed that he is an elected member of the ZBA and appointed member of North Hampton Forever.

Mr. Field presented a display of maps and plans that he had worked on to review with the Board. Mr. Field's first request to the Planning Board is that they consider that Mr. Horne's property is a "business" compound because the residences share a driveway and is held for income generating purposes, and refer the proposal to the Zoning Board and have them determine whether or not it is a permitted use under Section 405.3 of the Zoning Ordinances. Mr. Field said that the Planning Board should treat the proposal as a subdivision and also require a complete site plan approval and review process.

In response to Mr. Field's presentation, Mr. Oles explained the history of the septic approval. He said the reason why they got a State septic approval for a sink with a pipe sticking out of the side of the house garage is because that the State does not want any soaps, grease or oils going into the Mill Pond. He said that there are several options when designing a septic field; using number of bedrooms or gallons per day, and Mr. Oles said he mistakenly used number of bedrooms.

Mr. Horne said that he saw that there were two bedrooms on the septic design and he informed Mr. Oles that that was not happening and to change it to be designed by gallons per day, which Mr. Oles did, and the plan was approved by Christopher Moore of NH DES on March 19, 2008.

Mr. Wilson recessed the Meeting at 10:00 p.m.
Mr. Wilson reconvened the Meeting at 10:06 p.m.

Mr. Wilson asked if anyone from GFI was-were present, and there was no one. The residents present for the discussion left the meeting.

Mr. Pelech said that is-it has never been conceded by the Applicant that the proposal is a business in an R-2 district. He said that Mr. Field has attempted twice before this meeting to make the proposal out to be a commercial use and it is not, and the Building Inspector and the Zoning Board have told him it is not. Mr. Field had the opportunity to appeal that administrative decision to the Zoning Board and he chose not to do so.

Mr. Field said that Mr. Pelech represents-represented to the Planning Board that the Zoning Board has-had considered the issue of whether or not this is a business use. Mr. Field said that the ZBA did not address that issue; they-the ZBA denied Mr. Field's Motion for rehearing to consider that matter.

Mr. Pelech said that the ZBA made the determination that the proposal is not a business use because the issue was raised at the ZBA meeting and Mr. Mabey stated that anyone can rent their properties. Mr. Pelech stated for the record that there are 3 homes on the site and Mr. Horne lives in one of the three homes, and rents the other two, which he has rented for many years.

Mr. Wilson said that it was stated earlier that if a fourth house was to be built that Mr. Horne had no intention of selling the home; he would rent it out. Mr. Pelech agreed. Mr. Wilson said that it begs the question whether it is a business use because of the amount of rented houses sharing a common driveway.

Mr. Pelech said they were directed to go before the ZBA for a variance and the Applicant complied, and the variance was granted. The Board then requested a drainage study and the Applicant complied, and now they are asked to submit an environmental impact study on the preexisting non-conforming structures. Mr. Pelech said that the Applicant is being cooperative and willing to comply with suggestions made by the Board such as designating the shared driveway as a private road. Mr. Pelech said that the Applicant has stipulated to the Zoning Board that the two-story garage will never be a residence, and that the new structure would be built in the building envelope depicted on the plan. Mr. Pelech said that they have met the requirements of the Zoning Ordinance and the Applicant has done everything the Planning Board has asked him to do. He said Ms. Pohl is looking for the DVD of the July 2007 ZBA Meeting, that will explain ~~of~~ the discussion that took place preceding the decision to grant the variance and allow plumbing.

Mr. Wilson said that on the surface the proposal appears to be a simple question, "Will the Planning Board allow a subdivision and a lot line adjustment to create a fourth lot?" Mr. Wilson said that there a number of structures that are already on the lot and said it is more ~~of a~~ "site" than a proposed four lot parcel subdivision of a parcel. Mr. Wilson said it is the responsibility of the Planning Board to discover ~~what~~ the impacts of the proposal ~~has~~ on the Town, the abutters, and the environment. Mr. Wilson said that the area is one of the Town's most environmentally sensitive areas.

Mr. Greg Bower, North Hampton said that he does work for Peter Horne. He said that the Horne site is not a commercial site, and it is not his intent to make it a commercial site. He further stated that there is no living space in the garage. He said that Mr. Horne lives in one of the homes and rents out the other two.

Mr. Kroner opined that the existing garage is very large to be just a garage and questioned what it was used for.

Mr. Bower said that there is office space and storage space.

Mr. Pelech said that the garage is built according to the plan approved by the Zoning Board.

Mr. Wilson closed the Public Hearing at 10:38 p.m.

Mr. McManus said that there are a lot of questions and that it may be helpful to conduct a site walk of the property. Mr. Pelech said that that would be no problem. He said that the Zoning Board and the Conservation Commission have had site walks on the property.

Mr. Kroner said that he is concerned about the septic system and the possible development of another residence built on the lot where the three-story garage sits. He said that the Town does not monitor properties. He said it is up to resident~~s~~s to do code enforcement in Town.

Ms Kohl said that there is an enormous potential for damage, and would like more information on what is going to happen on the site.

Mr. Field suggested to that the Board ask the Building Inspector to attend the Site Walk scheduled to measure the height of the building to see if it conforms to the plans, and to have answers to all of the questions that Mr. Field submitted to Mr. Mabey months ago.

Mr. Pelech said that they would not agree to allow the general public on the property.

Mr. Wilson said that any meeting of the Planning Board, where there is a public quorum, is a public meeting. Mr. Pelech said that there are exemptions, and Mr. Wilson said that the exemptions under RSA

91A are very specific and [the Horne property site walk](#) would not qualify. ~~for the Horne site walk.~~ Mr. Pelech agreed to the site walk and to allow the general public.

Dr. Arena Moved and Mr. McManus seconded the Motion to continue case #09:02 to the June 4, 2009 Planning Board Meeting, and prior to that time conduct an inclusive Site Walk that includes inspecting the interior of the existing three story garage, existing two story heated garage, and the existing one and one half story garage. The vote passed (4 in favor, 1 opposed and 1 abstention). Mr. McGilvary opposed and Mr. Wilson abstained.

The Board discussed dates to hold the site walk.

Mr. Field informed the Board that he and his wife would like to participate in the Site Walk and would be out of the Country from May 14th to May 25th. He requested that the Board schedule it either prior [to](#) or ~~post~~[after](#) those dates.

The Planning Board agreed to conduct the Horne Site Walk

Mr. Field asked if the Board was going to invite the Building Inspector to participate in the Site Walk.

Mr. Wilson said that he would invite the Building Inspector to attend but in his opinion he said that it is not within the Board's jurisdiction to have the Building Inspector take measurements on a Site Walk.

Mr. Field commented that he could bring an engineer with instruments to determine the height as a guest of his on the Site Walk.

Mr. Wilson said that it was open to the public and that it was legal but would rather steer away from that type of situation.

Mr. Wilson said that the Planning Board has bent over backwards to try and accommodate the will of the abutters because when the Planning Board takes into account what the applicant wants and what the abutters want the proceedings have always come out better.

Mr. Pelech said that if Mr. Field wanted the dimensions of the three story garage, all he has to do is ask Mr. Horne, and he will tell him.

Mr. Wilson explained that the purpose of the Site Walk is to gather information that the Board feels is necessary to come to a reasonable decision and if it appears that anyone from the public is abusing the purpose of the Site Walk he will deal with the situation as best he can.

Mr. Oles said that Mr. Field would be responsible for the fees of the Engineer that he invites to the Site Walk, not Mr. Horne. The Board agreed with Mr. Oles and said that was correct.

Mr. McManus Moved and Mr. McGilvary seconded the Motion to waive the requirement not to take up new business after 9:30pm. The vote passed (3 in favor, 1 opposed and 2 abstentions). Mr. Kroner opposed and Ms. Kohl and Dr. Arena abstained.

New Business

09:06 – Friends of Centennial Hall (FOCH), 105 Post Road. (Conditional Use Sign Application) The Applicant proposes to change the current 42' x 3' temporary banner to a permanent status. The Applicant requests a waiver from Article V., Section 506.4.F – Banners. Property owner: Friends of Centennial Hall (FOCH), Property location: 105 Post Road, M/L 014-049, zoning district R-1.

In attendance for this application:

Jerry Murphy, Centennial Hall Board Member

Mr. Murphy explained that they request the current 42' x 3' banner on the Centennial Hall building become a permanent sign. He said that Centennial Hall is non-profit and all of the members are volunteers. He said that although the sign was approved as a temporary sign that it continues to promote Centennial Hall's cause.

Dr. Arena said that the banner takes away from the attractiveness of the building.

Mr. Kroner agreed with Dr. Arena and said that there are more creative ways to promote their cause such as a twitter site or a facebook page.

Mr. Murphy explained that the Board does not want it to be permanent; it's just that they don't want to take it down next week. He said that the expiration date of six months is either past or coming up. A condition of approval from the Zoning Board was to allow the banner to be erected for a six month period with three additional consecutive six month period renewals not to exceed twenty four months in the aggregate from the date of approval (February 26, 2003).

Mr. Wilson said that there is important information on the banner such as their phone number and web site and suggested they add that information on the current pole sign.

Mr. McGilvary Moved and Mr. Kroner seconded the Motion to deny the Conditional Use Sign Application, case #09:06 – Friends of Centennial Hall.

**Mr. Wilson opened the Public Hearing at 11:16 p.m.
Mr. Wilson closed the Public Hearing at 11:16 p.m. without public comment.**

The Board agreed that Centennial Hall does a great job.

The vote passed (5 in favor, 0 opposed and 1 abstention). Mr. McManus abstained.

Other Business

Rite Aid request for the balance of their landscape surety

In attendance for this discussion:

Ken Linsmen

Ms. Chase reported that as of March 31, 2009 there is a balance of \$7,667.59 in the Rite Aid landscape surety account.

Mr. Linsmen stated that the plantings have been replanted and that the boundary monuments are in place.

Ms. Chase confirmed that Mr. Mabey has inspected the plantings.

The Board discussed the issue of the engineering account. The Treasurer determined that a mistake was made prior to her appointment where an invoice was paid to the Town Engineer that should have been billed and paid by Rite Aid and was mistakenly paid out of the general engineering account. The amount of the invoice is \$1,147.50. Ms. Chase noted for the record that the owner's probably did not receive an invoice because of their history of paying their invoices in a timely manner.

Mr. Linsmen said that he would like copies of the invoices and documentation proving what they owe.

**Dr. Arena Moved and Mr. Kroner seconded the Motion to grant the request to release the balance of the surety account minus \$1,147.50 to be held until the resolution of whether or not the invoice has been paid by the owner, and to authorize the Recording Secretary to release the remaining if it is proven that the bill has been paid by the owner.
The vote was unanimous in favor of the Motion (7-0).**

GFI update and discussion on residents' "punch lists"

There was no one in attendance from GFI.

Federated Companies proposed ~~bank~~ architectural ~~material~~ changes in materials to be used in construction of the approved bank building on the site.

For the Board's consideration. ~~The~~ Federated Companies submitted a proposed change to the previously approved architectural materials of the proposed bank to be located at 26 Lafayette Road ~~for the Board's consideration.~~ The external material was changed from the original vinyl siding to brick. The Board referred to Section X.F – Architectural Standards and since there was a change to the material it was referred to the Planning Board for consideration.

Mr. Wilson noted for the record that there was no change to the originally approved foot print of the building.

Mr. McGilvary Moved and Mr. Kroner seconded the Motion to authorize the Building Inspector to issue the building permit for the building as shown.

Dr. Arena made a friendly amendment to include "with the caveat that they consider using a lighter shade of color".

Mr. McGilvary and Mr. Kroner accepted the friendly amendment.

The Motion failed (3 in favor, 3 opposed and 0 abstentions).

**Mr. McManus Moved and Mr. McGilvary seconded the Motion to direct the Building Inspector to issue a building permit to build the building as depicted in the photograph presented at the Meeting.
The vote was unanimous in favor of the Motion (7-0).**

The Meeting adjourned at 11:30 p.m.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved May 21, 2009