



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, October 1, 2009 at 7:00pm
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, Barbara Kohl, Laurel Pohl, and Michael Coutu, Select Board Representative.

Members absent: Tom McManus

Mr. Wilson convened the meeting at 7:00pm.

09:02 – Peter Horne, Trustee F.S. 123 Nominee Trust, H.T.L.A.E.H., Nominee Trust. 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 September 3, 2009 meeting.

In attendance for this application:

Attorney Bernard Pelech, Law Offices of Wholey & Pelech
Dr. Leonard Lord, RCCD District Manager

After reviewing Dr. Lord's peer review of the Environmental Impact Study performed by Adele Fiorillo of NHSC Inc., it was determined that Mr. Horne's subdivision proposal does not comply with Section 411 of the Zoning Ordinances. Mr. Wilson explained that part of Mill Pond was included in the acreage calculation of the proposed lots to meet the 2-acre requirement, and Section 411 states that wetlands **excluding bodies of water** may be used to satisfy minimum lot area and setback requirements; without including the area in the Mill Pond the lots would not satisfy the 2-acre requirement.

Mr. Pelech wrote a letter to the Board requesting a continuance for case #09'02 so that his client, Mr. Peter Horne, would have the opportunity to seek relief from the Zoning Board.

Dr. Arena moved and Mr. Coutu seconded the motion to continue case #09:02 – Peter Horne, Trustee F.S. 123 Nominee Trust, H.T.L.A.E.H., Nominee Trust to the November 5, 2009 meeting.

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

Discussion ensued on the definition of "body of water". Mr. Wilson asked Mr. Groth to do research on what determines a "body of water" for the Board.

09:12 – Thomas & Cheryl Nowak, 64 South Road. The Applicants have applied for a Conditional Use Permit under Article IV, Section 409.10 to construct a 10-foot by 400-foot roadway to access their backland. Property owners: Thomas & Cheryl Nowak; property location: 64 South Road, M/L 008-145-001, zoning district R-1. This case is continued from the September 3, 2009 meeting.

There was no one in attendance for this application.

Mr. Wilson mentioned that after considering the amount of fill to be used, the proposed road was closer to 12-feet wide rather than 10-feet wide.

Mr. Wilson referred to an email sent by Conservation Commission Chair Chris Ganotis to the Planning Board. Mr. Ganotis informed the Board that the Commission reviewed the Nowak application and voted to ask Mr. Nowak to attend their October 13th Conservation Commission meeting to answer any questions the Commission has, and to schedule a site walk of the property. The Commission also requested that the Planning Board take no action on the application until after the Conservation Commission has discussed Mr. Nowak's proposal and reports back to the Planning Board with any suggestions they may have.

The Board discussed whether or not they could continue Mr. Nowak's case when he was not present, and there was no one present to represent him.

Mr. Coutu suggested that since the application was pending with the Conservation Commission it would be prudent for the Board to continue the case to November.

Mr. Coutu moved and Dr. Arena seconded the motion to continue case 09:12 – Thomas & Cheryl Nowak to the November 5, 2009 Planning Board meeting, and to find common dates with the Conservation Commission to schedule a site walk on the Nowak property. The Vote was unanimous in favor of the motion (6-0).

The Board decided to schedule the site walk for Saturday, October 24, 2009 at 9:00am and ask the Conservation Commission to attend. The Conservation Commission may opt to schedule their own site walk if that date does not work for them. Ms. Chase will contact the Nowak's to see if that date works for them.

The Board was in receipt of a letter from ZBA Chair Richard Stanton. Mr. Stanton, on behalf of the Zoning Board, wrote to the Planning Board regarding a couple of issues the Zoning Board would like to propose for the Planning Board's consideration as it prepares changes and/or modifications to the current zoning ordinance. The first issue the ZBA would like the Planning Board to consider is developing an ordinance for Small Wind Energy Systems. The second issue deals with churches not permitted in the I-B/R district. Mr. Stanton referred to the federal law that has been in place since 2000. He suggested that the Planning Board may wish to discuss the law; "The Religious Land Use and Institutionalized Person Act of 2000" (RLUIPA 42 USC2000cc). Mr. Stanton also suggested that it may be helpful to have a definition of churches in Section III, since there currently is none.

The Board decided to address the issues at their next Work Session Meeting.

Mr. Wilson discussed with the Board the September 22nd ZBA Meeting, and the application submitted by Liyuen Buesing, and presented by Pastor Jacob Wing of Church Alive; case #2009:13. The Applicant requested a variance to allow a church in the I-B/R district where a church is not permitted. The variance was granted by a 3 to 2 vote. The site location is 112C Lafayette Road.

Mr. Wilson said that he watched the September 22nd ZBA meeting on channel 22, and updated the Board on what had transpired with case #2009:13. He said that in the course of the ZBA's discussion they had significant evidence that the proposed site was inadequate in terms of parking and safety. He said that Mr. Stanton had stated that he had researched other town's ordinances

and discovered that churches are usually permitted in the commercial/business zones rather than the residential zones. Mr. Wilson opined that, as ZBA Alternate Mr. Buber had said from the audience at the ZBA meeting, granting the variance was not consistent with the spirit of the ordinance because of Section 405 that states that the I-B/R zone encourages business development and growth because businesses provide jobs and contribute to the tax base. He commented that, as ZBA member Mr. Field said at the ZBA meeting, churches are allowed in zones R-1 and R-2, and are therefore not excluded from the Town.

Mr. Wilson said that if the law that Mr. Stanton is referring to (RLUIPA 42 USC2000cc) states that all towns must allow churches in every zoning district, then it is something that the Planning Board should consider. The Board discussed seeking a legal opinion on this law.

Mr. Kroner stated for the record that town officials take an oath to uphold the laws of North Hampton and other towns' ordinances should not be researched when resolving an issue on a Planning or Zoning application.

Dr. Arena said that the church is renting out the space so the tax structure for that building will not change.

The Board discussed whether or not to look into the possibility of the Planning Board calling for a rehearing for ZBA case #2009:13.

Mr. Wilson asked Mr. Groth whether or not the Planning Board had "standing" to do so. Mr. Groth said he would look into it and have an answer by Monday.

Dr. Arena commented that the Applicant still had to go through the site plan approval process with the Planning Board, and parking and other issues will be addressed then.

Ms. Kohl moved and Ms. Pohl seconded the motion to authorize Chair Wilson to enter an appeal for a rehearing on ZBA case #2009:13 if it has been determined that the Planning Board has "standing", and to authorize Chair Wilson to contact the Local Government Center to request an opinion on the Religious Land Use and Institutionalized Person Act of 2000 (RLUIPA 42 USC2000cc).

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

The meeting adjourned at 7:32pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved October 15, 2009 as amended