



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Thursday, December 3, 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, Laurel Pohl, Barbara Kohl, Tom McManus and Michael Coutu, Selectmen's Representative.

Others present: Brian Groth, RPC Circuit Rider and Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Wilson convened the meeting at 7:02pm, and noted for the record that the agenda was properly posted, and that there was a quorum.

Old Business

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 November 5, 2009 meeting.

In attendance for this application:

There was no one in attendance for this application.

- March 5, 2009 - Mr. Horne submitted his 3-lot subdivision application with a waiver request to the storm water drainage control plan requirement to the Board. The waiver was denied and the application was continued to the April 2, 2009 meeting.
- April 2, 2009 - The applicant requested a continuance to the May 7, 2009 meeting to allow more time to complete a drainage study.
- The Board requested that an environmental study be conducted on the Horne property, Mr. Horne hired Adele Fiorillo from NH Soils and the Board requested Dr. Leonard Lord from the Rockingham County Conservation District to do a peer review of Ms. Fiorillo's study.
- August 6, 2009, the applicant requested, and was granted, a continuance to the September 3, 2009 meeting.
- September 3, 2009, the applicant requested, and was granted, a continuance to the October 1, 2009 meeting.
- October 1, 2009 meeting, Dr. Lord discovered, during his peer review of the environmental study done by Ms. Fiorillo that the subdivision proposal did not comply with Section 411 of the zoning ordinances. The applicant requested and was granted a continuance to the November 5, 2009 meeting to be given the opportunity to seek relief from the Zoning Board.

- November 5, 2009, the applicant requested, and was granted, a continuance to the December 3, 2009 meeting.

The Board was in receipt of a letter from Attorney Pelech requesting a continuance for case #09:02 to the January 7, 2010 meeting.

Mr. Wilson explained that if the applicant intends on seeking relief from the Zoning Board, he would first need a denial, and since the applicant requests a subdivision, the denial should probably come from the Planning Board. He suggested that the Board consider denying the application without prejudice, and to waive the fees, except the notification fees. Mr. Wilson commented that the application has been continued numerous times so it would be appropriate to re-notify the abutters.

Dr. Arena asked for confirmation that if the applicant went before the ZBA and was approved, he would still need to apply to the Planning Board to address Planning Board issues.

Mr. Wilson confirmed that to be true, and noted for the record that the Board did not reach a judgment on the application, but rather it was administratively appropriate to deny the application.

Dr. Arena moved and Ms. Kohl seconded the motion to deny the application, case #09:02 without prejudice, and waive all application fees, except for abutter notification fees, in the case of a re-application within the next six months.

It was determined that a Zoning Board Application has not been filed by Mr. Horne, and Mr. Wilson commented that it is conceivable that the applicant's engineer may be trying to come up with a different plan that would not require a variance, and if this were the case, the Planning Board would be faced with a new proposal that would require a new application.

Mr. Horne was advised at the October 1, 2009 Planning Board meeting that the subdivision proposal he submitted to the Board required a variance, due to the fact that the proposed subdivision plan consists of each lot containing a portion of Mill Pond to satisfy the 2-acre lot requirement; whereas, bodies of water are not allowed in calculations of lot sizes.

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

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 November 5, 2009 meeting.

In attendance for this application:

Thomas Nowak, Owner/Applicant

Mr. Nowak explained to the Board that he did not have anything new to offer them, and asked that the Board advise him on what exactly they are expecting of him in terms of an environmental study for his proposal, that the Board recommended he do at the November 5, 2009 meeting.

It was determined that Mr. Nowak was under the impression that he was supposed to hire Dr. Lord to perform a study of his property that may support his proposal, when in fact, it is the Town that would hire Dr. Lord to review proposals submitted by the applicant, and reveal his findings to the Board.

Mr. Kroner said that he went to the Town Office and looked at the previous subdivision plan; there was no information on why the subdivision was designed the way it was. Mr. Kroner opined that the Board is looking for a less impactful proposal than the proposal that Mr. Nowak submitted originally.

Mr. McManus agreed and said that Mr. Nowak should submit evidence to the Board that would show what the implications would be to the wetlands.

Dr. Arena said Dr. Lord would be looking at the proposed plan to give a totally objective opinion on the proposal, not to give advice on how to design the plan to make it less of an impact on the wetlands.

Mr. Wilson said that Dr. Lord works for the Rockingham County Conservation District (RCCD), and because of his position there he can not engage in contracts with individuals. He explained that the Town would hire him to review the plan, and advise the Planning Board on whether or not it meets the four criteria outlined in Section 409.10. The criteria are as follows:

- A. The proposed construction is essential to the productive use of land not within the wetlands.
- B. Design and construction methods will be such as to minimize detrimental impact upon the wetland site and will include restoration of the site as nearly as possible to its original grade and condition.
- C. No alternative, which does not cross a wetland or has less detrimental impact on the wetland is feasible.
- D. All other necessary permits have been obtained.

Mr. Wilson suggested that if Mr. Nowak wanted to proceed, then he should submit a plan to the Board, that he would like Dr. Lord to review, and the Board will forward it to Dr. Lord for his comments.

Mr. Nowak said that he would like to submit another proposal that would be less of an impact on the wetlands; he requested a continuance.

Mr. McManus suggested that the applicant provide a professionally engineered plan. Mr. Wilson agreed.

Mr. Kroner referred to criterion A and said that defining “productive use of land” is difficult. He opined that “productive use of land” is putting a house on it. He said that he did not share the view that a road through wetland on Mr. Nowak’s parcel is essential to the productive use of the land.

Dr. Arena said that it was Mr. Nowak’s wish to use the land for a garden and play area for his children, and that’s what he considers productive use of the land.

Mr. Nowak bought the land ten years ago, and never had intentions of developing the back field, but thought of creating access to be able to enjoy it.

Mr. Coutu opined that Mr. Nowak is entitled to use his land as he sees fit as long as it comports with the zoning ordinances. He suggested Mr. Nowak come back to the Board with a couple of different designs that the Board would forward to Dr. Lord for him to review and comment on.

Mr. Wilson said that the Planning Board does not want to deny Mr. Nowak the use of his property. He said that it's the Planning Board's job to weigh both sides of the situation, and to consider the property owner's rights as well as the impact on the wetlands and the impact on the abutters.

Mr. McManus agreed that Mr. Nowak should have reasonable use of his land. He said that when he walked the property during the scheduled site walk, the proposed access way was very wet, and that the existing soils will not support a road, and would eventually sink, causing Mr. Nowak to add more and more material, which would begin to approach to filling in a wetland.

Dr. Arena said that he observed a tremendous amount of "hummocks" during the site walk of Mr. Nowak's property. He agreed that Mr. Nowak should be allowed to use his property, but the wetlands in that area are very important to the aquifers and head waters of the Winnicut River.

Mr. Wilson said that another alternative would be to get the proposed access way down to less than 3,000 square feet of impact, which would eliminate the need for Board approval. Mr. Kroner said that he would still need to get NHDES approval.

Dr. Arena mentioned his previous suggestion to build a roadway on pylons. Mr. Wilson said that after reviewing the ordinance he found that pylons can be built in tidal wetlands, not in the conservation district or in isolated non-bordering wetlands. Mr. Wilson also mentioned that the wetlands are disturbed during construction of a causeway.

Mr. Wilson opened the Public Hearing at 7:41pm.

Mr. Paul Harris, 58A South Road, spoke and explained that he subdivided his land and sold his subdivided lot to Mr. Nowak. He said that in order to meet the subdivision requirement that the newly created lot would have to have at least 1-acre of upland, he had to include half of his field in that new lot. Mr. Harris said that he chose to access his new home off site by purchasing an easement off of an abutter. He said he is very familiar with the process of crossing this particular wetland because he was before the State and the Planning Board many times regarding this issue when he originally subdivided his land. He said he spent thousands of dollars on wetlands analyses.

Mr. Wilson responded to Mr. Harris' comments and said that Mr. Harris had the opportunity to seek relief from the ZBA regarding the 1-acre of upland requirement, and elected not to do so. Mr. Wilson also said that it was Mr. Harris' choice to make the arrangements with his abutter to purchase the easement to access his property, which satisfied criterion C of Section 409.10. Mr. Wilson also mentioned that the Board and the Conservation Commission were very grateful for the extent Mr. Harris took to avoid significant detrimental impact on the wetlands.

Mr. Harris said that he went through extreme measures, at his own choice, to avoid doing exactly what Mr. Nowak is proposing.

Mr. Wilson closed the Public Hearing at 7:50pm.

Mr. Nowak requested a continuance of his application to the February 4, 2010 meeting.

**Mr. Coutu moved and Dr. Arena seconded the motion to continue case 09:12 – Thomas & Cheryl Nowak to the February 4, 2010 meeting.
The vote was unanimous in favor of the motion (7-0).**

Mr. Wilson asked Mr. Nowak to submit plan(s) to the Board, and they would forward them to Dr. Lord for his review before the February meeting. Mr. Nowak agreed.

Joseph Roy – discussion on the proposed bond amount for Greystone Village Development.

Mr. John Chagnon of Ambit Engineering was present to discuss the Greystone Village project. Mr. Chagnon said that Mr. Joseph Roy has received power of attorney over the development, and that he was also in attendance. Mr. Chagnon referred to his letter to the Board dated November 2, 2009, and the attached cost estimate to complete the infrastructure for phase I.

The Board decided at their September 17, 2009 Work Session Meeting that a surety in the amount of \$70,000.00 would need to be in place before any issuance of occupancy permits in the Greystone Village development.

Mr. Chagnon brought a new proposed surety amount to discuss with the Board. He proposed that the sidewalks be eliminated from the project, and to include roadway paving and Cape Cod berm totaling \$24,118.00.

Mr. Kroner said that he is concerned with altering the original plan (removing sidewalks) without notification to the abutters or residents; giving them the opportunity to attend the meeting to offer their input.

Mr. Chagnon said that the suggested paving and Cape Cod berm includes the roadway in phase I (shown in green on the phasing plan) and paving of the club house parking lot; it does not include paving of the temporary road used for emergency access.

Mr. Wilson asked if the temporary drainage system is adequate in perpetuity for phase I if there were no more construction done on this project, and Mr. Chagnon said that he believed it would be, and that there would be no need to expand the drainage system for phase I.

Mr. Chagnon said that pond in phase I has been reconfigured, and that phase I can be completed without violating approval from NHDES.

Mr. Chagnon explained that the NHDES permit is going to expire soon and that they would need to reapply using either the original approved plan or an altered plan.

Mr. Roy said that there are 12 lots (including the two model homes) remaining in phase I.

The sidewalks that were included in the original plan were discussed. Mr. Wilson said that the sidewalks were added so that the residents could walk safely to the clubhouse, and to pick up their mail.

Mr. Coutu commented that Mr. Roy has not taken title of the property, and a request to remove the sidewalks may be premature.

Mr. Chagnon explained that Mr. Roy has power of attorney over the project and is entitled to exercise all rights as if he were the owner of the project. Mr. Chagnon said that if the sidewalks were to remain as part of completing the project the amount of \$16,604.00 would need to be added to the surety amount.

Mr. Roy said that he may want to eliminate the “club house” because it is not financially viable for the amount of residents versus the costs of heating and maintaining. He said that he has met with the residents and most of them seem to agree. The Resident’s current lease includes a clause that any repairs and upkeep of the club house would be the financial responsibility of the Residents. Mr. Wilson believed that having a “club house” is one of the State’s requirements for a 55 and older park. Mr. Roy said he never came across that during his research on 55 and older parks.

Mr. Wilson suggested directing Mr. Groth to look up the law and any other information on 55 and older parks to have available for the next meeting.

Ms. Pohl commented that some people like to walk and to get there mail. Mr. Roy said that most of the tenants do not want the sidewalks because they would be situated in the middle of their lots. He said that he may move the mailboxes away from the “club house”.

Mr. Wilson said that the Board needs to make clear that the bond can be modified, and that they can instruct the Building Inspector to allow the issuance of building permits and occupancy permits for phase I, but in no way imply that the Board is approving any changes to the originally approved plan. He said that the Board would need documentation from the residents that they support the elimination of the sidewalks.

Mr. Wilson explained that the Board typically requests a 10% contingency for any surety amount, and so the required amount would be rounded up to \$27,000.00.

Dr. Arena commented that the “club house” belongs to the people living there. He voiced concerns over the possibility of it being eliminated. He commented that he would like to hear from the residents of Greystone Village on the matter.

Mr. Roy said that he is implementing the lease he uses for Maple Leaf Village for the residents of Greystone Village, and it does not include the use of the “club house” for the new homes.

Mr. Roy said that he planned to come back before the Board to address issues other than the bonding amount.

Mr. Roy requested that the Board agree to the \$24,118.00, and that he would pay by check that the Town can use to set up an escrow account.

Mr. Groth suggested including the amount of \$16,604.00 for the sidewalks, because they are still part of the original approved plan.

Mr. Wilson and Mr. Coutu agreed that Mr. Groth’s suggestion would be the conservative thing to do. Mr. Coutu commented that the property in question is a “distressed property”, and Mr.

Wilson said that it should be noted that the Board is not approving any changes to the original plan at this time.

Mr. Coutu moved and Dr. Arena seconded the motion to approve the bond amount of \$27,000.00 to complete the 1" roadway paving and Cape Cod berm, and that this approval does not in anyway, modify, alter, or amend the plan that is currently filed; the approval is only with respect to the bonding requirement for phase I.

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

Mr. Chagnon said that he would like to come to a Work Session Meeting or an ARC Meeting to discuss the future of the project. He will let Ms. Chase know which meeting they would like to attend.

Mr. Wilson recessed the meeting at 8:36pm.

Mr. Wilson reconvened the meeting at 8:45pm.

New Business

09:18- Sara Pennfield, 8 Warner Lane, Hampton, NH 03842. The Applicant proposes a Change of Use from an office space to a hair salon. Property owners: Gail & Paul Garrigan, PO Box 54, North Hampton. Property location: 86 Lafayette Road, Unit 5. M/L 013-004-005, zoning district I-B/R.

In attendance for this application:

Sara Pennfield, Applicant

Gail & Paul Garrigan, Owners

Ms. Pennfield, 8 Warner Lane, Hampton, explained that she currently operates a hair salon in Hampton and would like to move her business to North Hampton. She said that she has been in business for 17 years. She further explained that she rents one booth to a hairdresser, so there would be no more than two hair cutting chairs and one sink for the business.

The Board was in receipt of a letter from the Building Inspector stating that the septic for that building is adequate with the addition of a hair salon.

It was determined that there is enough parking with 21 spaces. Ms. Pennfield said that the maximum amount of clients at one time would never exceed 6 people. She said that she will replace the existing sign and add her business name to the existing pole sign.

Mr. Wilson explained the Board's concerns with a change of use application, (1) parking, (2) adequate septic, and with a hair salon they are concerned with chemicals used and rinsed into the septic system.

Ms. Pennfield said that she does not offer "perms" as one of her services and that she uses Italian hair colors that have natural ingredients. She also explained that all soaps, including shampoos, hand soaps and cleaning supplies, as well as the hair colors, are inspected by the State. She said that she has to have State approval in order to maintain her cosmetology license.

The Board determined that the parking requirement was satisfied, and the septic system at the site was adequate to service the new hair salon.

Mr. Wilson opened the Public Hearing at 8:54pm.

Mr. Wilson closed the Public Hearing at 8:55pm without public comment.

Dr. Arena moved and Mr. McManus seconded the motion to approve case #09:18 – Sara Pennfield with a condition that the Applicant shall provide the Town with copies of all requisite State approval, licenses, and permits to operate a hair salon business at the proposed location.

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

Other Business

Michael Donahue & Russell Jeppesen to discuss Zoning Ordinance, Article IV, Section 406.2.2 concerning non-conforming lots of record as amended at the March 2009 Town Election.

Ms. Kohl recused herself from the discussion.

Attorney Donahue, representing Russell Jeppesen, was present to discuss the amendments made to Article IV, Section 406.2.2, and passed at the March 2009 Town Election. Mr. Donahue said that he and Mr. Jeppesen attended the second public hearing in December 2009 on the amendments to Section 406.2.2, which the Board had already voted on to put on the ballot for the Legislative Body to decide. He said that they were advised by the Board to come back this year and discuss with the Planning Board the amendments that were made, and perhaps the Board would consider making further amendments to that section.

Mr. Donahue said that the “lot of record” section, 406.2.2 never had a requirement for frontage, prior to the Town vote amending it to require that each “lot of record” existing on March 5, 1974 have 100-feet of frontage. He explained that Mr. Jeppesen has a “lot of record” with 90-feet of frontage, and there may be other lots in Town that meet all of the other requirements except for frontage, that would now require a variance from the Zoning Board. He suggested that the Board consider lowering the required amount of frontage to 40-feet to reflect the frontage requirement for a “back lot” subdivision.

Mr. Wilson suggested that the Planning Board consider adding a clause to Section 406.2.2 stating that the Planning Board could grant a Conditional Use Permit on lots less than 100-feet of frontage, eliminating the need for a variance. Mr. Wilson asked Mr. Groth to “look into” this option.

The Board decided to wait for information from Mr. Groth, and work on possibly amending Section 406.2.2 again.

Mr. Donahue said that he would be willing to help Mr. Groth on the matter.

A motion was made and seconded to adjourn the meeting at 9:30pm.

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

Respectfully submitted,
Wendy V. Chase
Recording Secretary
Approved 12/17/2009