



Meeting Minutes
North Hampton Planning Board
Tuesday, January 7, 2014 at 6:30pm
Town Hall, 231 Atlantic Avenue

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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: Shep Kroner, Chair; Laurel Pohl, Vice Chair, Joseph Arena, Tim Harned, Dan Derby and Phil Wilson, Select Board Representative.

Members absent: Mike Hornsby

Alternates present: None

Others present: Jennifer Rowden, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Kroner convened the meeting at 6:35 p.m.

- I. The Planning Board will hold a Public Hearing on January 7, 2014 at the North Hampton Town Hall, 231 Atlantic Avenue, North Hampton, to consider the approval of the proposed amendments to the following Zoning Ordinances for placement on the March 2014 Town Warrant:

- 1. A continuation of the First Public Hearing on adoption of the Demolition Delay Ordinance. This Public Hearing is continued from the December 17, 2013 Public Hearing**

Mr. Kroner reopened the public hearing on the proposed Demolition Delay Ordinance. The Heritage Commission recommended that the proposed ordinance should be referred to as, Demolition Review Ordinance. Although there was not an official vote change it, the Board agreed to it.

Don Gould, 21 Fern Road – wished everyone a Happy New Year. He spoke respectfully in opposition of the proposed ordinance. He said that there should be a compelling reason to adopt this ordinance because the affect it has of property rights and doesn't believe that's been demonstrated. He explained that he and Mr. Chuck Gordon researched, and got a copy of, a list of demolition permits issued in the past five (5) years; 25 demo permits were issued and the majority of those buildings were of no historic value. He referred to the "Carter Farm" property, 167 Atlantic Avenue, that was sold last year and the new owner took it upon himself to contact the Heritage Commission and allowed them to document it. It was determined that the house was not salvageable, but the barn was disassembled and moved to Wakefield, NH to be reassembled, and this happened without a Demolition Review Ordinance in place.

Dr. Arena commented that it was the State that determined the fifty (50) year trigger date for determining historic significance of a building. It is his opinion that a one hundred (100) year trigger date

47 would be more reasonable. He commented that he respects the work that has gone into the proposed
48 ordinance, but it has become riddled with obfuscation, and will make no sense unless the obfuscation is
49 eliminated. He pointed out that the ordinance does have merit, and if the town is to get involved it
50 should do so without “time limits”; that is the fair way to do it.

51

52 Ms. Rowden pointed out that the will of the people in Town is to maintain and preserve the historic
53 character of the town, as shown throughout the Town’s Master Plan.

54

55 Mr. Kroner referred to Mr. Gould’s comment on the “Carter Farm” property and said that the
56 Demolition Review issue was active and it was presented to the new property owner who was asked if
57 he would be willing to participate in the process by contacting the Heritage Commission, which he did
58 voluntarily. He pointed out that the proposed ordinance does not prevent a property owner from
59 demolishing a structure.

60

61 **Chuck Gordon, 10 Sea Road** – said that his house is about 100 years old and he is sensitive to an
62 ordinance that would compromise it. He understands that it would not prohibit demolition, but if a
63 property owner were to sell their 50+ year old property the Real Estate Agency would probably have to
64 disclose information of a demolition review process that may have no impact on a potential buyer, but it
65 may be considered an additional burden to a buyer and cause a negative impact on the selling process.
66 He suggested the Heritage Commission contact property owners that would qualify for such protection
67 and ask to document and photograph their home instead of waiting for a property slated for demolition.
68 He said the proposed ordinance is a presage for the kind of things people have to go through who own
69 property in an Historic District, and stated that he would not like to see an Historic District in North
70 Hampton.

71

72 **Donna Etela, 75 Exeter Road, Heritage Commission Chair** – said that at the December 17, 2013 Planning
73 Board Work Session people were encouraged to attend the Heritage Commission meeting on December
74 19th because they were discussing the proposed ordinance. She stated the following points:

75

- 76 • It is a Demolition *Review* Ordinance, not a Demolition *Delay* Ordinance.
- 77 • They don’t expect to go through the process more than once per year.
- 78 • The State did not determine the 50-year old threshold; it was established by the
79 National Registry of Historic places.
- 80 • Buildings 50 years and older will be reviewed by the Heritage Commission, but the
81 majority of them will not require a demolition review.
- 82 • There is a great deal of interest regarding historic preservation and referred to last
83 year’s election when the town voted to raise money to preserve the Dale Farm on Post
84 Road.
- 85 • The proposed 30 “calendar” days throughout the ordinance does not work; it needs to
86 be changed to 30 “business” days.
- 87 • It is highly unlikely an Historic District will be established in North Hampton, it would be
88 very expensive and requires a great deal of research.
- 89 • The Heritage Commission has been surveying properties and had volunteers trained to
90 do the work.
- 91 • The two buildings currently listed in the National Register of Historic Places are not
92 prohibited from having anything done to them, but if something drastic were to be done
they would be removed from the list.

- 93
- The Commission doesn't want to tell people what to do; they just want an opportunity to document the building before being demolished. There is a public meeting involved, giving people the chance to come and speak on the property.
 - North Hampton is the only Town in the seacoast that doesn't have a Demolition Review Ordinance.
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99 **Jane Currivan, 153 Atlantic Ave, Heritage Commission Member** - stated that she is a Realtor for
100 Coldwell Homes and commented that a demolition review would not impede a real estate transaction.
101 She said it is more of an obstacle with a failed septic system than a demolition review.
102

103 Ms. Pohl raised questions about the criteria that would trigger a review.
104

105 Ms. Etela said that the only criteria to trigger a review is the 50 year cutoff date; every property will be
106 reviewed by the Heritage Commission, but not all properties will be required to go through the entire
107 demolition review process.
108

109 **Dieter Ebert, 12 Cedar Road** – questioned the responsibilities of the Code Enforcement Officer in the
110 demolition review process. Ms. Etela said that the CEO's only responsibility is to inform the Heritage
111 Commission when a demolition permit application comes to him for a building 50 years old or older.
112

113 **Robert Field, 123 Mill Road** – said that there are at least two (2) Supreme Court cases every year
114 regarding "counting days", and encouraged the Board to conform to the NH RSA pertaining to how
115 "counting days" is calculated and determined.
116

117 **Don Gould, 12 Fern Road** – referred to the second paragraph under "criteria" and said that it's not just
118 the 50-year cutoff date that would trigger a review; it would also need to be determined whether or not
119 it is eligible for listing in the National Register of Historic Places or NH State Register of Historic Places.
120

121 Ms. Rowden said that being placed on the Register of Historic Places requires that the building be at
122 least 50-years old.
123

124 Ms. Etela explained that it is difficult to be listed on the Register of Historic Places. A building or part of a
125 building that is not 50-years old could qualify, for example if it was designed by a famous architect, or a
126 significant historic event happened at its location.
127

128 Discussion ensued on criterion #2 under C. Criteria – *it is listed or is eligible for listing in the National*
129 *Register of Historic Places or New Hampshire State Register of Historic Places, according to the stated*
130 *eligibility criteria for listing on such registers.*
131

132 There were concerns raised of putting an added burden on the Code Enforcement Officer regarding this
133 criterion and the kind of expertise someone would need to determine if a building were eligible.
134

135 **Robert Field, 123 Mill Road** – said that the Building Inspector's decision is the predicate in which to
136 appeal. The rights to appeal and the rehearing process doesn't fall within the 30-day time period.
137

138 Mr. Harned said that that would be a moot point because the review process is done in 30 days,
139 regardless.

140

141 Mr. Wilson called for a point of order and suggested the Board move forward and close the Public
142 Hearing if there is no more public comment so the Board could begin deliberations.

143

144 Mr. Kroner closed the Public Hearing at 7:55 p.m.

145

146 Mr. Kroner suggested changing "calendar days" to "business days" throughout the document.

147

148 Mr. Wilson said that there are two criteria he goes by when adding a new Zoning Ordinance, (1)
149 Resident's property rights, and (2) will it diminish property value. He said this Ordinance is about
150 protecting property without owning it. Any land ordinance adopted protects something, such as
151 wetlands setbacks and yard and lot setbacks. The question is, is there a greater good to the public than
152 the cost to the individual landowner. He said the Town has preserved its rural character and heritage
153 and people like that. He questioned whether it was justifiable to place a 30-day maximum restriction
154 before someone tears down a building which may be of significant historical value. He said that the
155 process is voluntary; no one can make the owner not tear it down and they don't have to allow anyone
156 on the property to take photos.

157

158 Mr. Derby said that he has concern that the ordinance won't pass in its current form given the way
159 people will interpret it. He said he does believe there is a lot of enthusiasm and support in town for
160 preservation, and a lot of involved people willing to maintain the preservation process. He said
161 something needs to be added to make it simpler or more straightforward.

162

163 Mr. Kroner believes that it will pass. He said that in the ten years he's been a member of the Planning
164 Board, ordinances generally pass when supported by the Planning Board. He does not believe the
165 process is onerous and believes it won't happen very often.

166

167 Dr. Arena suggested taking another year to hash things out; there is no need to rush it.

168

169 Mr. Wilson said there is some urgency to this and suggested adding the following under the Purpose
170 Section: "compliance with the review process defined herein is voluntary on the part of any property
171 owner's demolition permit". He said that is the first line they would read and then next year they can
172 perhaps write something that is simpler and straightforward.

173

174 Mr. Harned said that he has always dealt with property rights, but there are two pieces of property on
175 each side of the boundary, and what you do on your property could impact the values of those other
176 properties. He asked if the responsibility could be changed from the Code Enforcement Officer to the
177 Heritage Commission under Section D. Procedure. Ms. Rowden said that could not be done.

178

179 Ms. Rowden said that the process is not voluntary. She said it is voluntary to have the structure
180 documented, but compliance with the 30-day process is not voluntary. She cautioned the Board on how
181 they use the word "voluntary".

182

183 Mr. Wilson suggested adding a third paragraph under *Purpose* – "Participation in the demolition review
184 process defined hereunder is voluntary on the part of any property owner seeking a demolition permit".

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Mr. Harned moved and Ms. Pohl seconded the motion to approve the Demolition Review Ordinance with the following amendments:

- 1. Add the third paragraph under Purpose that Mr. Wilson suggested above.**
- 2. Change all “calendar” days to “business” days throughout the document.**
- 3. Change the word Criteria, under C. to Criterion and eliminate the subparagraph 2.**
- 4. Add in Section D.4, after property owner in the first sentence, *if the property owner has elected to participate.***

The vote passed in favor of the motion (5 in favor, 0 opposed and 1 abstention). Dr. Arena abstained.

Mr. Harned moved and Ms. Pohl seconded the motion to hold a Second and Final Public Hearing on the Amended Demolition Review Ordinance on January 21, 2014.

The vote passed in favor of the motion (5 in favor, 0 opposed and 1 abstention). Dr. Arena abstained.

- 2. The First Public Hearing on proposed amendments to Article VII, Section 704 – Certificate of Occupancy and Article VII, Section 706 – Notice of Action. The intent of the proposed amendment is to place the responsibility of posting the Building Permit and Certificate of Occupancy with the Applicant instead of the Building Inspector/Code Enforcement Officer.**

Mr. Kroner opened the Public Hearing at 8:50 p.m.

Dieter Ebert, 12 Cedar Road – said that he agrees that it is a good idea to change the responsibility of posting the building permit from the Building Inspector to the Applicant, but questioned the need to “post” a Certificate of Occupancy.

Dr. Arena said that he brought that issue up at the last meeting and said that the Certificate of Occupancy is issued when the project is complete and doesn’t agree that it can be appealed, so there is no need to post it.

Mr. Wilson explained that it gives aggrieved parties another opportunity to exercise their rights to appeal the decision of the Code Enforcement Officer.

Mr. Kroner closed the Public Hearing.

Dr. Arena said that it doesn’t make sense to him to post both the building permit and the certificate of occupancy.

Mr. Kroner agreed with Mr. Wilson that it gives people the opportunity to take issue with the judgment of the Building Inspector.

Mr. Kroner moved and Ms. Pohl seconded the motion to place the proposed amendments to Article VII, Sections 704 and 706 on the March 2014 Warrant as written.

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

- 3. The First Public Hearing on proposed amendments to Article III, Section 302.10 – Definition of “Duplex”- the intent of the proposed amendment to the definition of “Duplex” is to remove all vagueness from the current definition.**

232
233 The Board was in receipt of copies of proposed amendments to the definition of duplex, and Section
234 406.4.1 - duplex requirements drafted by Mr. Harned.

235
236 Mr. Wilson suggested adding “garages” with residential space within the definition.

237
238 Mr. Kroner opened the Public Hearing at 9:30 p.m. on the proposed amendments to the Duplex
239 definition.

240
241 **Dieter Ebert, 12 Cedar Road** – suggested describing a “duplex” as having a cross section of taxable
242 space. He also said that he doesn’t think the proposed addition of Section 406.4.1.b should be added
243 because it deals with building codes; that’s a code enforcement issue.

244
245 Mr. Wilson commented on Mr. Dieter’s suggestion on “taxable space” and said that there are so many
246 factors involved in the appraisal process, and didn’t think it would work.

247
248 Mr. Kroner closed the Public Hearing.

249
250 The Board discussed several ways to describe what would constitute a “duplex”.

251
252 **Mr. Wilson moved and Ms. Pohl seconded the motion to approve the Duplex Definition drafted by Mr.**
253 **Harned with the following amendments:**

- 254 **1. Eliminate the word “entirely” from the third sentence.**
255 **2. Insert after residential space - , including garage space,**
256 **3. Change the word “the” to “this” after separate in the third sentence.**
257 **The vote was unanimous in favor of the motion (6-0).**

258
259 **Mr. Wilson moved and Ms. Pohl seconded the motion to hold the second and final Public Hearing on**
260 **the proposed amendments to Article III, Section 302.10 on January 21, 2014.**
261 **The vote was unanimous in favor of the motion (6-0).**

262
263 Ms. Chase reminded the Board that the proposed amendments to Article IV, Section 406.4.1 were not
264 posted and would have to wait to be discussed at the next published public hearing on January 21, 2014.

265
266 The Board agreed to hold the First and Final Public Hearing on a proposed amendment to Article IV,
267 Section 406.4.1 that would include the word “contiguous” in front of “non-wetland area”.

268
269 The regularly scheduled monthly Planning Board Meeting will immediately follow the Public Hearing.

270
271 **Mr. Wilson moved and Ms. Pohl seconded the motion to suspend the Rule that the Board will take no**
272 **New Business after 9:30 p.m.**
273 **The vote was unanimous in favor of the motion (6-0).**

274
275 **I. Unfinished Business**

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277

278 **1. Case #13:02 – Harbor Street Limited Partnership, 7B Emery Lane, Stratham, NH 03885.**
279 The Applicant, Joseph Falzone, Harbor Street Limited Partnership, submits a pre-
280 application Design Review pursuant to Subdivision Regulation VI.A.2. – Design Review
281 Phase, for a proposed 49-unit residential workforce housing subdivision and proposed
282 road totaling 3,200 feet. Property owner: Field of Dreams at Post Road, LLC, 7B Emery
283 Lane, Stratham, NH 03885; Property location: 160-186 Post Road, North Hampton; M/L
284 018-038-000; Zoning District R-1: High Density and R-2: Medium Density. This Case is
285 continued from the December 3, 2013 meeting.

286
287 **Mr. Wilson moved and Ms. Pohl seconded the motion to continue Case #13:02 to the**
288 **February 4, 2014 meeting.**
289 **The vote was unanimous in favor of the motion (6-0).**
290

291 **2. Case #13:14 – Cadillac Auto of Boston, c/o Estate of Peter Fuller, 43 Lincoln Street,**
292 **Belmont, MA 02478.** The Applicant proposes to subdivide a 10.14 parcel of land into
293 two lots, “A” and “B”, consisting of 5.02 acres for proposed lot “A” and 5.12 acres for
294 proposed lot “B”. Property owner: Same as Applicant; property location: 14 Maple
295 Road, North Hampton, NH; M/L 006-065-000; Zoning District R-2 – Residential Medium
296 Density. This Case is continued from the December 3, 2013 meeting so that the
297 Applicant would have the opportunity to meet with the Conservation Commission for
298 their review and comment.

299
300 In attendance for this application:
301 Jack Szemplinski, P.E., Benchmark Engineering
302

303 The Case was continued from the December 3, 2014 meeting so that the Applicant could meet with the
304 Conservation Commission for a review of the Application.

305
306 The Conservation Commission reported to the Board that they concluded that the wetland buffer would
307 adequately mitigate surface runoff water before reaching the wetlands.

308
309 Mr. Harned had asked the square footage amount within the building envelope.

310
311 Mr. Szemplinski said that the lot identified as 006-065-000 building area has 5,000 square feet and the
312 lot identified as 006-065-002 has 5,500 square feet.

313
314 Dr. Arena asked if the Applicant had a topographical map, and he did not. Dr. Arena said that when he
315 drives by the site it doesn’t appear to have much elevated land. He said that there should be a site walk
316 on the property, after the winter, before anything can be done.

317 Mr. Szemplinski reiterated that the wetlands were determined and flagged by a Soil Scientist. He
318 further testified that each of the concerns of the Town’s Engineer, Steve Keach, KNA Engineering, were
319 addressed and satisfied. He submitted a copy of the report and a letter from Aquarion Water Company
320 confirming that they would provide water service for each of the proposed dwellings.

321
322 The Board discussed the configuration of the proposed lots, and it was mentioned throughout the
323 discussions that although the proposed subdivision met the zoning ordinances; it was a general
324 consensus of the Board that it does not meet the “spirit and intent” of the zoning ordinances.

325

326 Mr. Harned said that he is uncomfortable with the notion of two 3,000 square foot homes on 5-acre
327 parcels roughly 60-feet apart. He said that the application meets the requirements but if it's approved it
328 most likely will end up before the Zoning Board for relief of the setbacks to build larger homes, so
329 fundamentally the Board would be creating lots that will not meet the ordinances. He referred to
330 Section V.B. of the subdivision regulations, which states that the requirements are *minimum*, and
331 compliance with the minimum requirements in no way obligates the Board to approve the application
332 solely on that basis.

333

334 Mr. Wilson said that unless someone is willing to defend the proposition that the proposal is not
335 consistent with the zoning ordinance he doesn't see how it can be denied. He said that the Board could
336 require the Applicant to provide an High Intensity Soil Survey (HISS) map instead of relying on the Soil
337 Scientist's report.

338

339 Ms. Pohl said that if the Board votes to deny the application there has to be strong reasons for that
340 denial. Mr. Wilson agreed that they would have to have a strong case to uphold in Court.

341

342 Mr. Szemplinski said that the proposal meets the requirements; therefore the Board should approve it.

343

344 Mr. Derby said that there is a fair amount of what can be done on the property, and that the problems
345 with the size of the houses and the close proximity are not insurmountable; those problems are going to
346 solve themselves.

347

348 Mr. Kroner said that the best scenario would be to have the biggest break between the houses. He is not
349 a big fan of variances, but would rather see two homes that "fit in" with the character of the area.

350

351 Ms. Rowden opined that the Board doesn't have the backing or a good enough argument to deny the
352 application.

353

354 Dr. Arena again suggested the Board conduct a site walk of the property before making a decision.

355

356 Mr. Wilson disagreed and felt they would learn nothing new from a site walk of the property.

357

358 **Mr. Derby moved to approve the application as presented. Mr. Wilson made a friendly amendment to**
359 **include the following conditions of approval:**

360

1. **Recordable Mylar.** Applicant shall submit a recordable Mylar of the approved plan with
361 signatures and seals affixed of all licensed professionals whose names appear on the plan.
362 Pursuant to RSA 676:3.III the final written decision, including all conditions of approval,
363 shall be recorded with or on the plat.

364

2. **Certificate of Monumentation.** Applicant shall provide a copy of the Certificate of
365 Monumentation, stamped and signed by a NH LLS, certifying that all monuments depicted
366 on the plan have been properly set in accordance with the subdivision regulations.

367

3. **State Permits.** Applicant shall submit evidence of receipt of all required federal, state, and
368 local permits, including but not limited to, approval for driveway permits, approval for
369 subdivision, approval for septic systems, and shall note their numbers, as appropriate, on
370 the plan.

371

4. There shall be no changes to the Mylar except to meet these Conditions of Approval.

372
373 **Mr. Derby accepted the friendly amendment and Ms. Pohl seconded the motion.**
374 **The vote passed in favor of the motion (4 in favor, 2 opposed and 0 abstentions). Mr. Harned and Dr.**
375 **Arena opposed.**

376 **II. New Business**

377
378 There was no new business before the Board.

379
380 **III. Other Business**

381
382 1. Discussion on "jurisdiction" between the Little Boar's Head Village District and the Town of North
383 Hampton Land Use Boards.

384
385 Mr. Wilson reported that there had been confusion of what the Little Boar's Head Village District
386 (LBHVD) Commissioners thought the Select Board was suggesting that they do. The Select Board
387 suggested that they go to the State Senators and ask that they endorse a private bill that would
388 essentially ratify concurrent jurisdiction that the two (2) municipalities have exercised for the past 67
389 years. He said the Commissioners at first interpreted that in a different way but have since agreed to
390 have the Chair of the Commission and the Select Board Chair meet to try and figure it out.

391
392 Dr. Arena said that the error was made in 1904-1905 when the section (LBHVD) was carved out of the
393 Town of North Hampton.

394
395 **Mr. Derby moved and Mr. Harned seconded the motion to adjourn the meeting at 10:40 p.m.**
396 **The vote was unanimous in favor of the motion (6-0).**

397
398 Respectfully submitted,

399
400 Wendy V. Chase
401 Recording Secretary

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403 Approved January 21, 2014