



Meeting Minutes
North Hampton Planning Board
Tuesday, November 4, 2014 at 6:30pm
Mary Herbert Conference Room
233 Atlantic Avenue

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10 These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a
11 transcription.

12

13 **Members present:** Shep Kroner, Chair; Tim Harned, Vice Chair, Dr. Joseph Arena, Dan Derby, and
14 Phil Wilson.

15

16 **Members absent:** Barry Donohoe and Jim Maggiore, Select Board Representative

17

18 **Alternates present:** Nancy Monaghan

19

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

21

22 Chair Kroner called the meeting to order at 6:30pm.

23 Chair Kroner seated Ms. Monaghan for Mr. Donohoe.

24

25 **I. Old Business**

26

27 **Case #14:07 – Applicant, James Jones, 207 Atlantic Avenue, North Hampton, NH 03862. Site Plan**
28 **Review Application for property located at 38-42 Lafayette Terrace, M/L's 021-14, 34, 35 and 36.** This
29 Case is continued from the September 2, 2014 Meeting. The Applicant requests a Continuance to the
30 December 2, 2014 meeting.

31

32 In attendance for this Application:

33 James Jones, Owner/Applicant

34

35 The Board was in receipt of a request to Continue Case #14:07, from James Jones.

36

37 Mr. Jones said that the engineers are close in getting the application finalized.

38

39 **Dr. Arena moved and Mr. Wilson seconded the motion to continue Case #14:07 to the December 2,**
40 **2014 Meeting.**

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

42

43 **Case #14:11 – Applicant Christine Harvey, Sea Breeze Sleep, 27 Lafayette Road, Suite C2, North**
44 **Hampton, NH 03862.** Conditional Use Sign Application – The Applicant requests (1) a waiver to Article V,
45 Section 506.6.K – Wall Sign. The applicant would like to exceed the 12-foot square footage requirements
46 and (2) have two wall signs where only one wall sign is permitted per business. Property owner: North

47 Hampton Capitol Group, C/O Minco Development, 231 Sutton St., Suite 1-B, North Andover, MA 01845;
48 property location: 27 Lafayette Road, Suite C-2, North Hampton, NH 03862; M/L: 007-057-000; Zoning
49 District: I-B/R – Industrial Business Residential. This Case is continued from the October 7, 2014 meeting
50 so the Applicant could gather and provide further information to the Board.

51

52 The applicant was not present.

53

54 Chair Kroner moved Case #14:11 to the end of the agenda, or until 9:30pm, in case the Applicant
55 arrived.

56

57 The Applicant did not arrive.

58

59 **Mr. Wilson moved and Mr. Harned seconded the motion to deny the Conditional Use Sign Permit**
60 **Application without Prejudice because there was no one in attendance on behalf of the Application.**
61 **The vote was unanimous in favor of the motion (6-0).**

62

63 **II. New Business**

64

65 **Case #14:13 Applicant MacDoo LLC, 750 Exeter Road, Hampton, NH 03842 requests a Conditional Use**
66 **Permit under Article IV, Section 409.10.** The Applicant proposes to construct a driveway on upland but
67 within the wetland buffer zone. Property owner: Same as the Applicant; Property location: 225 Post
68 Road, westerly area of lot adjacent to Post Road; M/L: 022-014-003; Zoning District: R-1.

69

70 In attendance for this application:

71 Brian Dumont, Applicant/Owner

72 Robert MacDonald, Applicant/Owner

73 Attorney Steve Ells, Counsel to the Applicants

74 Luke Herlihy, Soil Scientist, Gove Environmental Services

75

76 Mr. Ells explained the facts of the matter before the Board.

77

- 78 • His clients, Robert MacDonald and Brian Dumont, MacDoo, LLC, bought the subject lot of land
79 and built a duplex structure.
- 80 • The property is currently for sale.
- 81 • The subdivision was done by the prior owner and there was wetland on the frontage of the lot
82 so a right-of-way was created for the new lot, in effect, a shared driveway.
- 83 • MacDoo, LLC hired Gove Environmental Services to perform a wetland review of the site, which
84 produced a corridor of upland running from Post Road to the building site.
- 85 • The Application for a Conditional Use Permit is to construct a new driveway that will service only
86 the subject lot and thereby eliminating the shared driveway situation.
- 87 • The proposed driveway will not be in the wetlands; it will be in the wetlands buffer. The current
88 shared driveway is not in the wetlands, but is in the wetlands buffer.
- 89 • The proposed driveway will be 12-feet in width complying with NH DOT standards. The shared
90 driveway has a low of 8-feet in width, to a high of 10-feet in width, which does not meet NH
91 DOT standards.
- 92 • The former Fire Chief, Dennis Cote wrote a letter to the Board supporting the new access based
on the safety issues of the current driveway.

- 93 • MacDoo, LLC has installed a drainage system along the common boundary.
94

95 Mr. Ells went over the criteria under Section 409.10 Conditional Use Permits:

96 **A. The proposed construction is essential to the productive use of land not within the wetlands.**
97

98 Mr. Ells said that they do have another access, but that the current access does not provide for the
99 productive use of the property. He said coupled with the former Fire Chief's opinion that it is not safe,
100 and the adjacent neighbor being very unhappy with the shared driveway, it doesn't make for a
101 productive use of the property. The adjacent abutter has made it difficult in the marketing process and
102 they don't foresee the situation getting any better than it has been this past year.
103

104 **B. Design and construction methods will be such as to minimize detrimental impact upon the wetland
105 site and will include restoration of the site as nearly as possible to its original grade and condition.**
106

107 Mr. Ells said they will use pervious pavers on a gravel base for the construction of the driveway.
108

109 **C. No alternative, which does not cross a wetland, or has less detrimental impact on the wetland is
110 feasible.**
111

112 Mr. Ells explained that Mr. Herlihy did the wetland mapping and will go over what is there now, and
113 what is being proposed.
114

115 **D. All other necessary permits have been obtained.**
116

117 They received a State driveway permit, and if the Conditional Use permit is approved, they would have
118 to get all other permits as a condition of approval.
119

120 Mr. Ells submitted copies of the proposed plan with hand drawn depictions of how the water flows to
121 the rear of the property because of the drainage system they added. They have done everything they
122 can when building the duplex to minimize the impact on the wetlands.
123

124 Mr. Herlihy addressed criterion 409.10.C. He explained that in 2010 the EPA and Army Corps of
125 Engineers changed some of the requirements in identifying wetlands, so what was a wetland in 2007
126 may no longer meet the requirements to be a wetland today. He said that there are three (3) criteria
127 that must be met to be classified as a jurisdictional wetland. The area for the proposed driveway meets
128 two of the three criteria so it is not classified as a jurisdictional wetland. He said that they propose to
129 use porous pavement; not porous pavers. Mr. Herlihy said that the proposed driveway has the same
130 impacts as the current driveway; no impacts on the wetlands, but impacts on the wetlands buffer.
131

132 Mr. Wilson commented that there is no real change to the hydrology and the soil type, just the
133 definition. He said the fundamental problem was that there were fewer impacts on the wetlands and
134 more of an effect on the abutters across Post Road where the pasture is flooded. He asked if there has
135 been any remedy to that. Mr. Herlihy didn't think so.
136

137 Mr. Wilson said that the roof runoff was directed towards that back of the property and the drainage
138 installed along the boundary was a good thing to have done but it didn't remediate the problem of

139 water moving from the subject property over towards the abutter's property, it just prevented things
140 from getting worse.

141

142 Mr. MacDonald said that when the lot was bare, the back portion of the property downgraded towards
143 Post Road, since then the grade of the house has risen, so the grading now sheds from the front of the
144 home out towards the back. Mr. MacDonald did not have a plan depicting the current topography of the
145 land.

146

147 Mr. Dumont explained that when they purchased the property they had no intentions of putting in a
148 new driveway. They realized the driveway was not safe; vendors were having difficulties passing
149 through when making deliveries. They talked to Chief Cote and came to the conclusion that the
150 driveway was not a safe area for cars, so they looked for alternatives.

151

152 Dr. Arena inquired whether or not they anticipated these types of problems with a shared driveway
153 before they built the duplex.

154

155 Mr. Dumont said that they discovered the safety issues when they were 80% through the construction
156 of the duplex. He said they are going to sell the duplex regardless, but in good conscience would like to
157 sell it with a safer driveway.

158

159 The Board determined that when the Board approved the original two-lot subdivision for the Birmbas' a
160 condition of approval was for the driveway to be pervious and it is not. The driveway is constructed with
161 asphalt.

162

163 Mr. Kroner asked if they could clip the branches back on the current shared driveway so that emergency
164 vehicles can pass through.

165

166 Mr. Dumont explained that they only have a right-of-way; they cannot cut any trees or make any
167 changes to it; they don't even maintain it.

168

169 Chair Kroner said that he will let the abutter have an opportunity to speak when he opens a Public
170 Hearing.

171

172 Mr. Wilson said that he did not think the Board had adequate information to take jurisdiction of the
173 application. They need a study of the drainage and hydrology that shows the Board what is going to
174 happen with the water from the proposed driveway, and a maintenance plan for the pervious asphalt.
175 He said the Board is being asked to rescind a previous Board's condition of approval.

176

177 Mr. Ells said that it was not rescinding a previous Board's condition of approval. He said there has been a
178 change in circumstances and they are trying to come up with a more desirable situation. He said the
179 drainage study will be costly to the owners and would like a sense of the Board that if it were completed
180 would they be able to get a Conditional Use Permit. He said creating an as-built plan and providing
181 maintenance guides for porous asphalt is not a big deal for them to provide to the Board.

182

183 Ms. Rowden said that drainage and safety are potential issues but it is a Conditional Use Permit based
184 on criteria that can't be met; the Board can't approve it if it doesn't meet the criteria.

185

186 Mr. Ells disagrees with Ms. Rowden and said that ultimately it is the Board's decision.

187

188 Discussion ensued on whether the abutters should be allowed to speak without the Board taking
189 jurisdiction of the Application.

190

191 Mr. Wilson and Mr. Harned agreed that they are sympathetic to the abutters for coming to the meeting,
192 but the most productive use of the Abutters and the Boards time is to wait to open the Public Hearing
193 when all the information has been presented.

194

195 Emmanouella Vernouri is the adjacent abutter and owner of the current driveway. She spoke from the
196 audience and said she has a letter from Mr. Paul Apple, the Town Administrator and Mr. Kevin Kelley the
197 Building Inspector stating that the Town cannot cut down trees on her property. Regarding the safety
198 issues presented, she said that there is nothing wrong with her driveway.

199

200 Mr. Wilson said that since the Chair allowed one abutter to speak, he should allow all.

201

202 Chair Kroner respectfully disagreed and said it was pertinent to the Board's understanding of the Case.
203 There is a letter from the Town the Board doesn't know about regarding issues on the driveway and the
204 whole matter involves accessing this property through Ms. Vernouri's property, her testimony is unique
205 in this situation.

206

207 Mr. Derby said he will not engage in a straw poll. He said the Board is trying to determine whether they
208 have enough information to take jurisdiction of the application.

209

210 Ms. Rowden said that if there is a letter from the Town that the Board did not receive pertinent to the
211 Case, the Board may not have complete information and may not want to take jurisdiction of the
212 application.

213

214 Chair Kroner said the letter could be a private matter between the Town and Ms. Vendouri; it could
215 contain Attorney/Client Privileged information.

216

217 **Mr. Wilson moved and Ms. Monaghan seconded the motion that the Board decline taking jurisdiction**
218 **of the application because the information the Board has is incomplete.**

219

220 Mr. Wilson said that he is not prepared to act upon the plan without a drainage study; without a clear
221 description of the requirements of maintenance for the proposed pervious driveway; and an as-built
222 plan showing the contours of the property after the various grading; the contours shall be no greater
223 than 1-foot increments.

224

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

226

227 Mr. Ells requested a continuance of Case #14:13 to the December 2, 2014 meeting. He hand wrote the
228 request and submitted it to the Recording Secretary for the record.

229

230 **Mr. Wilson moved and Mr. Harned seconded the motion to grant the requested continuance.**

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

232

233 Mr. Ganotis asked to submit photos of his property into the record. The Chair advised him to submit
234 them to Ms. Chase prior to the December 2, 2014 meeting.

235 Ms. Vendouri requested 15 minutes of the Board's time at their next meeting to hear her side of the
236 story.

237
238 Chair Kroner advised her to address her concerns directly to the Town Administrator or the Select Board
239 via a letter.

240
241 Mr. Wilson said it may be a civil issue to be taken up in Court.

242
243 Mr. Ganotis said that there have been regulation violations and ordinance violations. He said the Town
244 has failed to enforce the conditions placed in 2003.

245
246 Chair Kroner said he encourages Mr. Ganotis to work directly with the Code Enforcement Officer and the
247 Select Board on those issues, because it is their responsibility to handle these situations.

248
249 **Case #05:19Thera Research Inc., PO Box 890, North Hampton, NH, through its Attorney Peter Loughlin,**
250 **requests a five-year extension on the Conditional Use Permit.** The Conditional Use permit to install a
251 Distributive Antenna System (DAS) and use the "Rowell" building as its hotel; approved by the Planning
252 Board on November 7, 2005; PB Case #05:19, and to update the Board on the developments in the
253 telecommunications industry over the past two years.

254
255 In attendance for this request for extension:

256 David Maxson, Isotrope, LLC

257 Dennis Kokernak, Thera Research, Inc.

258 Attorney Peter Loughlin

259
260 Mr. Maxson said that they continue to keep contact with Wireless Companies and have had constructive
261 discussion with these companies regarding DAS.

262
263 Mr. Maxson did an overview of the current wireless coverage in North Hampton. The WTF tower at
264 Walnut Avenue has one wireless company on it; it is centrally located and covers much high traffic areas
265 and commercial areas. The WTF tower at South Road west of I-95 has a couple wireless carriers on it;
266 Verizon moved off of it and went onto the Hampton water tank. There are WTFs in adjacent towns
267 surrounding North Hampton.

268
269 There have been active discussions among wireless company representatives regarding occupying the
270 parcel donated to the Town off of Mill Road (Tax Map 12, lot 62). It is a good location because it is
271 heavily wooded and it would likely be invisible to the surrounding community. The location is landlocked
272 and something has to be done to gain formal access to the site. A tower at this location would be
273 compliant with the WTF regulations. The Zoning Ordinance encourages collocation, or to install DAS
274 instead.

275
276 The wireless companies are competing to deliver broadband data services to subscribers. They are
277 developing their 4G "LTE" long term evolution by using their existing cell sites to add the 4G services on
278 new frequency bands. Verizon has started limited voice calling on LTE; Verizon also announced that it
279 plans to shut down 3G in 2021. Development is being focused on LTE today.

280

281 Thera Research wants to keep the opportunity of DAS open and enable a wireless service while being
282 serious about enforcing the Ordinance.

283

284 Mr. Wilson asked if there have been discussions with the Town to work together to get DAS going.

285

286 Mr. Maxson said that they have not, but they try to keep the Town updated with these types of get-
287 togethers. Thera Research would be happy to be involved in the conversations if the community were
288 interested in moving DAS forward. Thera Research has taken risks by retaining the right to use a
289 particular property (Rowell building). Generally site acquisitions don't commence the development of a
290 DAS hub or, get permits for it until they have a willing wireless company on the line. Thera Research
291 would have to put more funds forward to make DAS more inviting to wireless carriers.

292

293 Mr. Wilson asked what it would take on the part of the Town to get DAS going. He said that the
294 advantages have been here for years and it is his perspective that the business model for wireless
295 companies is that they rely on looking for cell tower sites, and not interested in DAS.

296

297 Mr. Maxson said it is hard to get cell tower companies to shift to DAS.

298

299 Ms. Rowden recommended that Board approve a two year extension rather than the requested five
300 years; five years is too long.

301

302 **Dr. Arena moved and Mr. Wilson seconded the motion to take jurisdiction of the extension request.**
303 **The vote was unanimous in favor of the motion (6-0).**

304

305 **Mr. Wilson moved and Mr. Derby seconded the motion to approve the five year extension for the**
306 **Conditional Use Permit with the condition that they update the Board on DAS in either year two or**
307 **three.**

308

309 **Mr. Harned made a friendly amendment that Thera Research update the Board by the end of year**
310 **three, or sooner, if they think it is necessary.**

311

312 **Mr. Wilson accepted the friendly amendment.**
313 **The vote was unanimous in favor of the motion (6-0).**

314

315 Chair Kroner called for a five minute recess.

316 Chair Kroner reconvened the meeting.

317

318 **Paul Powell – 14 Maple Road Subdivision M/L 006-065 – Report of RCCD of wetland delineation.**

319 In attendance for the discussion:

320 Paul Powell, Owner of 14 Maple Road

321 Attorney Steve Ells, Counsel to the Applicant

322 Chair Kroner explained that the Board approved a two lot subdivision for Cadillac Auto on January 7,
323 2014, the wetlands were delineated to show lot 65 having 1.16 contiguous acres of upland and lot 65-2
324 having 2.38 acres of contiguous upland. Mr. Powell bought both lots and hired Gove Environmental
325 Services to delineate the wetlands on April 7, 2014 that showed lot 65 having 1.56 contiguous acres of
326 upland.

327
328 Mr. Powell was directed by the Building Inspector to seek approval from the Planning Board on the
329 change in the wetland delineation.
330
331 Mr. Kelley also requested that Mike Cuomo, RCCD (on behalf of the Town, but at the expense of Mr.
332 Powell) and Mr. Kroner attend the site walk and witness the soil samples taken from parts of the
333 prototype that had become upland instead of wetlands. The increase to the uplands enabled the
334 property owner to meet the requirements to build a duplex, when originally he did not meet the
335 requirements. Mr. Cuomo agreed with the new delineation.
336
337 Chair Kroner said that they struggled with what Mr. Powell should do. He referred to Section 409.3 of
338 the Zoning Ordinance. He said he didn't know if he should direct Mr. Powell to go to the Conservation
339 Commission.
340
341 Dr. Arena said that once the land sold it has had a tremendous amount of fill brought in. Mr. Powell said
342 he has brought zero fill in.
343
344 Mr. Wilson said they have a subdivision plan that has been recorded with the wetland delineations and
345 Planning Board Decisions rendered. Mr. Powell would have to request an amended subdivision plan to
346 be able to build what he wants. He currently has an approval in a manner that doesn't accommodate a
347 duplex. The Board doesn't have a formal application before them so they wouldn't be able to decide
348 anything at this meeting.
349
350 Chair Kroner said that although he agrees with that in purpose, he questioned whether every time
351 someone purchased a lot of record and has the wetlands delineated to show where a house can be
352 built, do they have to go back and looked at every recorded plan to see if the wetland delineation has
353 changed in order to build a structure on it. Mr. Wilson said it depended on how long the subdivision
354 was done.
355
356 Mr. Wilson said, in his opinion, Mr. Powell brought forth his own data so the Board would have to deal
357 with it as an amended subdivision plan.
358
359 Chair Kroner said he was concerned as to what the property owner would be applying for.
360
361 Mr. Wilson said that he would want a recorded plan with the correct delineation so it would prove
362 something illegal wasn't built on the lot.
363
364 Chair Kroner asked if the Board would allow Mr. Powell's attorney Steve Ells a chance speak. There
365 were no objections.
366
367 Attorney Ells said that respectfully, after the subdivision was approved the Planning Board's work is
368 done. The Building Inspector has received proof that subsequent to the subdivision approval a wetland
369 scientist delineated more upland and the property owner paid for the third party reviewer, Mike Cuomo
370 to witness the re-delineation, and the lines were re-plotted by Steve Oles who prepared a new plan. He
371 said that Planning Board has no jurisdiction for condominium conversion. He said that the Planning
372 Board's job is done and the Building Inspector received the proof needed to allow for a building permit
373 to construct a duplex.

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Chair Kroner said that the only time the abutters are able to comment is during the Public Hearing portion of the subdivision application process. He said if the neighbors knew they intended on building duplexes they may have reacted differently, and may have come up with potential conditions of approval that would protect them as abutters.

Mr. Wilson referred to V.C – Suitability of Land, of the subdivision regulations.

Mr. Harned referred to IV.C – Approval required. *Prior to land clearing, excavation , site preparation construction or any other such activity may begin in a site, and before any permit for such activities may be issued, final approval of the subdivision is required as evidenced by the recording of the approved plan at the Rockingham County Registry of Deeds. All activity on the site shall be performed in accordance with the approval.*

Mr. Ells said that he is sure the language in the regulations applies to the Board’s Conditions of Approval.

Ms. Rowden said that in her opinion an amended subdivision is not required; she suggested the Board seek an opinion from Town Counsel.

Mr. Ells said that the Planning Board did not place a condition of approval that there could only be a single-family house built on the lot.

Mr. Lagassa spoke from the audience and said that he is a direct abutter and went to the Public Hearing for the original subdivision application. He did not speak. He said if he knew they were going to construct a duplex on the lot he would have argued more strenuously. He said that if the property owner wants to change it, he should either have to go before the Planning Board with an amended subdivision plan, or before the Zoning Board for a variance.

Chair Kroner said that if they had to submit an amended plan they would have to have the entire property resurveyed, which is a very expensive process, because the current Surveyor could not put his stamp on the plan. The Board may consider allowing an affidavit that would direct anyone to the amended plan held on file at the Town Office, instead of requiring the amended plan to be recorded at the Registry of deeds.

Mr. Ells said that the Condominium Site Plan has to be recorded at the Registry of Deeds and suggested adding a note to that plan that an additional purpose to the recording of the condominium plan is to show the correct wetland mapping of lot 65.

It was the general consensus of the Board to give the abutters the opportunity to comment at a Public Hearing regarding the wetland delineation change to the plan because it allows for a duplex to be constructed on the lot when the original plan only allowed for a single-family home.

Chair Kroner noted for the record that he personally does not agree with the process. He said that when you buy a piece of property and the wetland delineation is wrong, you shouldn’t have to go back to the Planning Board for approval. He said the Planning Board approves the subdivision property lines and that is when the process ends for the Board. He said wetlands change constantly.

420 Chair Kroner said that the Applicant come back to the December 2, 2014 meeting and it will be noticed
421 as an amended wetland delineation to the approved subdivision plan and that will give the abutters and
422 affected parties an opportunity to voice their concerns or support. The Applicant may apply for a waiver
423 to the application fees except for the notification to abutters.
424

425 There was no official vote taken because it was not noticed as a Public Hearing. The Planning Board
426 advised the Applicant of the aforementioned.
427

428 Ms. Rowden reminded the Board of the Rollins Farm Subdivision in Stratham; the Public Hearing is
429 scheduled for tomorrow night.
430

431 Chair Kroner said that he was not going to be back in Town in time to attend the Stratham meeting.
432

433 The Board directed Ms. Chase to send an email to the Stratham Town Planner as follows:
434

435 The North Hampton Planning Board, at their regularly scheduled November 4, 2014 Meeting, voted
436 unanimously (6-0), that they concur with the recommendations set forth by the Rockingham Planning
437 Commission Regional Impacts Subcommittee, regarding the Rollins Hill Development, LLC proposal, to
438 construct a 48 lot, over 55 Retirement Planned Community Development, located at 20 Rollins Farm
439 Drive, Stratham, NH and Tax Map 15, Lot 24, Goss Road Rear, North Hampton, NH.

440 **Dr. Arena moved and Ms. Monaghan seconded the motion to have Ms. Chase send the email to the**
441 **Stratham Town Planner.**

442 **The vote was unanimous in favor of the motion (6-0).**
443

444 **III. Other Business**

445

446 Dr. Arena addressed the Board with concerns he has had regarding definitions within the Zoning
447 Ordinance. He said that word "riding arena" does not appear in the dictionary because it is really two
448 words. The first word describes what type of arena it is, such as boxing arena and riding arenas, etc. He
449 did not agree with the Planning Board's conclusion that you can't have a "riding arena" because "riding
450 arena" does not appear under the definition section of the Zoning Ordinance.
451

452 Dr. Arena moved to adjourn the meeting at 9:54 p.m. without objection.
453

454 Respectfully submitted,
455

456 Wendy V. Chase
457 Recording Secretary
458

459 Approved November 18, 2014