

**ZBA Minutes
July 21, 1999**

Chairman Mike Iafolia,
Russell Jeppesen,
Mark Johnson,
Russ McCann (Alternate),
Paul Charron (Secretary);

The Chair opened the meeting by introducing the members, and explaining the procedures that would be adhered to in hearing the cases. After hearing petitioners speaking for and against each case, the Board would go into Deliberative session to consider each case and make its decision.

[Those deliberations and motions are included with the Case description, and italicized for distinction.]

He also noted that there were only four members in attendance, and by State law cases are decided by a majority of the full Board (five members), which in this situation means that a vote of 3-1 was needed to win. He offered each applicant the chance to withdraw and be scheduled for the next meeting, with notification at the Town's expense. He then called the first case:

Case 99:15

Paul & Margaret Kelleher Revocable Trust, for property located at 4 Exeter Road, Tax Map 14, Lot 47, requests a variance to Article IV Section 406.2 of the North Hampton Zoning Ordinance, and asks that the applicant be allowed to construct a single family dwelling on a lot that does not meet current zoning.

The applicant withdrew by letter after presenting a plan of the lot approved by the Planning Board in October 1986 showing that it was a buildable lot. The Chair noted that if this Approved Plan had been presented to the Building Inspector to begin with, there would have been no need for an appeal to the ZBA. No action required.

Case 99:16

Douglas & Karin Nelson, for property located at 25 West Road, North Hampton, Tax Map 20 Lot 1, requests a variance to Article IV Section 406.2 of the North Hampton Zoning Ordinance, and asks that they be allowed to erect a home on a lot that does not meet current zoning.

Ernie Cote spoke for this case. The parcel in question is divided by the Town Line separating North Hampton and Rye, and the applicant wishes to use the Town Line to subdivide the parcel into two lots, the one created in North Hampton being less than the required acreage (1.5A vs. 2A).

The discussion included facts such as that all other setbacks and zoning requirements would be met, there are no wetlands on the property, there is 4000 square feet for a septic system as required by the State DES, and room for a house, and no other variances would be required to be a buildable lot.

[After checking the location of the property on the wall map of North Hampton, the Chair questioned the legality of a buildable lot where it was necessary to go through another Town to get to it. After discussion about similar cases

in the past, a MOTION was made to Table the case and get a legal opinion, and Table it to a date and time certain (August 18, 1999, 7:30 PM). The MOTION passed 4-0.]

Case 99:17

Turner Porter, for property located at 34 Willow, Tax Map 5 Lot 9, requests a Special Exception as provided in Article IV, Section 405, and in Article V, Section 507, for a Home Occupation, and asks that he be allowed to operate a professional office at this location.

Turner Porter spoke for the petition reviewing the criteria for a Home Occupation under Section 507 and addressing each as it related to his situation:

- 1.; There is one secretary not related to the family;
2. The use is conducted wholly within a principal structure
3. There are no signs now, nor will there be;
4. The business does not produce noise, dust, odors, etc.;
5. There are no articles sold on the premises;

Questions were asked concerning Little Boar's Head (LBH) zoning, and the response was that the LBH ZBA knew about it, as well as the abutters, because it was discussed at the LBH ZBA meeting where he was asking for a variance to be able to subdivide his lot. Specifically the question of Home Occupation was addressed because Mr. Porter made a point of notifying the LBH ZBA that if he were not allowed to subdivide, then he would conduct his business from the carriage house and sell the lot next to his house. If he were allowed to subdivide, he would conduct his business over the garage and put the lot next to his house in conservation to ensure an ocean view from his office.

The question came up if he had any documentation to substantiate his claim that LBH ZBA had considered the Home Occupation and approved it. The discussion revolved around both the wording of the LBH Zoning Ordinance dealing with Home Occupations, and the fact that North Hampton's was more restrictive, and since no one had a LBH Zoning Ordinance booklet, the Secretary left to get one at the Town Office.

Russ McAnn kept the minutes until Paul Charron returned, and the discussion continued concerning approval by LBH and the necessity to get North Hampton's approval because their ordinance was the more restrictive. When Charron returned with the LBH Zoning Ordinance, the Chair read the relevant section into the minutes:

"Section V, Residential Zoning District Uses

In the Residential Zoning District no building or premises shall be erected, altered, or used for

C. Any use except one or more of the following uses:

10. Home Occupation. An occupation of a one-person nature, clearly incidental and secondary to the use of the dwelling for dwelling purposes, and not changing the character thereof, may be permitted in an existing dwelling or accessory structure on the part of a resident or occupant of the dwelling, PROVIDED that the home occupation will involve no more than one exterior sign not to exceed one square foot in area, and will involve no exterior displays, no employees other than a secretary within the premises, no customers, products or sales on the premises, no increase in automobile traffic or parking, and no noise, vibration, smoke, dust, odors, heat, glare, or electrical or other disturbance, and the home occupation will not be injurious, offensive, or detrimental to the neighborhood or its residential character, and will be in accordance with the spirit of this Ordinance."

Mr. Porter was again questioned about a letter from the LBH ZBA indicating approval of the Home Occupation, and the necessity of knowing that LBH had dealt with it. It was suggested that once such a letter were secured it could be delivered to the Building Inspector instead of presented at the next meeting, but the Board were concerned with public input.

A MOTION was made to Table the petition to a date and time certain (August 18, 1999, 7:30 PM) and it passed 4-0.

Case 99:18

Roland & Martha Lemire, for property located at 90 Walnut Avenue, Tax Map15 Lot 1, requests a variance to Article IV Section 406, and asks that the side setbacks be waived to allow the construction of an attached garage where the setbacks are 35' and the garage would be 29'.

Roland Lemire spoke for the petition. He has owned the house for approximately 2 1/2 to 3 years. He introduced plans showing the steepness of the land and the location of the house, drive and septic. On the plan by NH Soils the house is shown as almost 75' from the side lot line, although a second drawing labeled NH Technical College

showed the house about 56' from the side lot line. With a 35' setback in his R-3 Zone, a conventional garage (c. 26') would not fit.

Lemire also produced pictures showing the house and how steep the slopes are on each side.

Discussion concerned the uniqueness of the lot with its driveway across the front of the house and the lack of a suitable location to put the garage. Lemire introduced Darren Knight, the site contractor, who explained that when the house was built it was moved from its intended location (as shown on the NH Soils plan), and ended up closer to the side lot line because of ledge or other factors uncovered during construction. The drive was run across the lawn because initially the garage was supposed to go on the left side of the house which ended up too steep to be practical.

There was some discussion with the abutter, Mrs. Wollmar, who owns the lot next door, (although there is no house on the lot right now), who questioned how it will be used, if it would devalue her lot, what the legal conditions are to grant the petition, and what size the garage would be. Lemire answered by saying that the new garage would be approximately 26' x 24', have a full foundation, cars would be parked on the first floor (at grade from the front of the house), and possibly a family room, computer room, or pool room on the second floor.

The Chair answered the question about legal conditions explaining the difference between a Special Exception and a Variance. A Special Exception, he explained, goes with the people who own the property and lasts as long as they own it. A Variance goes with the property, is as permanent as the property, and is granted when the enforcement of the ordinances would be a hardship to a particular property.

[Deliberation centered on the need for a garage and the hardship inherent in this property. A MOTION was made to grant, and it passed 4-0.]