

**TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
July 17, 2002**

The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday July 17, 2002 at the North Hampton Town Hall to conduct a Regular Meeting of the Board ("Meeting"). Notice of the Meeting had been properly noticed in the Portsmouth Herald on July 8, 2002.

- I. Member(s) Present: Robert Field, Jr., Chairman, Mark Johnson, Vice-Chairman, Dick Wollmar, Richard Luff, and Ted Turchan.

Member(s) Absent: None

Alternate(s) Present: None

- II. Other(s) Present: Ms. Krista Tischendorf, Recording Secretary of the Board

Chairman Field called the meeting to order at 7:00pm; declared a Quorum present, which quorum remained present and voting throughout the Meeting; and, then proceeded to the business of the Meeting. It was noted that each Applicant coming before the Board is entitled to have the Application/Appeal considered by a Board consisting of five (5) members; although Board action may be taken by a unanimous vote of a Quorum of three (3).

I. Procedure; Swearing in of Witnesses.

- A. Chairman Field explained the Rules of Procedure which would be applicable to this Meeting to members of the audience, including Applicants and/or their representatives.
- B. Pursuant to RSA 673:15 Chairman Field swore in all persons present who would be giving testimony or presenting comment on matters to be considered by the Board at the Meeting.

II. Preliminary Matters/General Correspondence. None.

III. Acceptance of Minutes.

Mr. Luff recused himself from consideration of the Minutes.

June 19, 2002 – Regular Meeting of Board

Vote: Upon motion duly made by Mr. Field, and seconded by Mr. Wollmar, to accept the minutes of June 19, 2002 as presented. The vote was 4-0.

June 29, 2002 – Special Meeting of the Board

Vote: Upon motion duly made by Mr. Field, and seconded by Mr. Wollmar, to accept the minutes of June 29, 2002, as presented. The vote was 3-0, Mr. Johnson abstained.

IV. Old Business

- A. **2002:22 – 19 Maple Avenue, Peter Fuller**, Requests a Variance to Article IV, Section 406 and asks that said terms be waived to permit a non-conforming lot.

This case was previously presented for informational purposes at a Public Hearing held on June 19, 2002. The sense of the Board at such time was to approve the Variance.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Wollmar, it was voted to approve the request for variance to permit creation of a non-conforming lot, which will remain unbuildable in the absence of the granting of future variances upon application duly made and considered. The vote was 4-0. Mr. Field abstained.

- B. **2002:23 – 4 Post Road, Pobama Trust**, Requests a Variance to Article IV, Section 406 and asks that said terms be waived to permit construction of a single family dwelling that will be less than the required setback.

2002:24 – 4 Post Road, Pobama Trust, Requests a Variance to Article IV, Section 409.9 and asks that said terms be waived to permit construction of a single family dwelling that will be less than the required wetland setback of 50 feet.

Mr. Field noted that the North Hampton Planning Board, Conservation Commission and the Board, together with a representative from the Town of Hampton Planning Board held a joint site walk on June 21, 2002. Then, by correspondence dated June 21, 2002, the Board invited the Hampton Boards to hold a Joint Session on the matter but there was no response, as yet, to such correspondence.

Mr. Field informed the Board that a question had been raised regarding inquiring if all necessary variance had been applied for. Article IV, Section 411, states that one (1) contiguous acre of non-wetland soils for the site of a house. This question had been communicated to the Applicant by the Building Inspector on June 28, 2002, in the form of a letter. The sense of the Chair was it would be unwise for the Board to consider the Applicant's request in piece meal fashion. Mr. Murray, acknowledged receipt of the Building Inspector's letter, and requested that the matters before the Board be considered. The matter was then presented to the Board.

On behalf of the Board, Chairman Field stated to the Applicant that should a Section 411 variance request be filed, the Board would promptly seek the written advice of Town Council as to the multi-jurisdictional elements of the case.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Wollmar, it was voted to table the requests for variance until the application to include Article IV, Section 411 issue is complete and filed. The vote was 4-0. Mr. Field abstained.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to seek the written advise of Town Council should an application for Variance to Article IV, Section 411, be filed by the Applicant. The vote was 4-0. Mr. Field abstained.

- A. **2002:25 – 7 Hampshire Road, Michael & Tamera Saal**, Requests a Variance to Article IV, Section 406 and asks that said terms be waived to permit the construction of a two car garage on the easterly side of the applicant's home that will be less than the required side setback.

This case was previously presented for informational purposes at a Public Hearing Held on June 19, 2002. The sense of the Board at such time was to approve the Variance.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted to approve the request for variance to permit a two car garage within the side setback. The vote was 4-0. Mr. Field abstained.

V. **New Business**

- A. **2002:29 – 7 Hampshire Road, Michael & Tamera Saal**, Requests a Variance to Article IV, Section 406 and asks that said terms be waived to permit the construction on the easterly side of the applicant's home that will be less than the required front setback.

- i. Jurisdiction. Properly Before the Board.
- ii. Case Presentation: Michele Peckham, Esquire, was present to represent the Applicants. There was an administrative error in connection with Case # 2002:25 where the assessment card noted the property was zoned R1 but the Town Map had it zoned R2. It was determined that the R2 zoning was correct. If the Saal's move the garage back it would fall into the wetland buffer, that was not an option.
- iii. Five (5) Conditions: Attorney Peckham addressed the five (5) conditions, which must be satisfied to enable the granting of a Variance. Chairman Field inquired of the audience if there was any person present who would object to the Board taking notice of the factual presentation made by Attorney Peckham on June 19, 2002, as to the five (5) conditions in connection with Case #2002:25. There was no objection and the Board incorporated by reference the testimony presented by Attorney Peckham, on June 19, 2002, as to such conditions.
- iv. Board Observations/Special Considerations: None
- v. Public Comment: None

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Luff it was voted to approve the variance to permit a two car garage within the front setback. The vote was 4-0. Mr. Field abstained.

- B. **2002:26 – 24 Walnut Avenue, Crown Atlantic Company, LLC**, Requests an appeal of an administrative decision of the North Hampton Planning Board for relief from Article IV, Section 415.6.A.1 to determine on the part of the ZBA as to whether it or the Planning Board (or both boards) has jurisdiction to grant the request for relief.

- i. Jurisdiction. Properly Before the Board.
- ii. Case Presentation: Lorne M. Fienberg, Esquire, of The McLane Law Firm, was present to represent the applicant and interested parties, Crown Castle International, Mr. David Tivnan, Verizon Real Estate Specialist and Mr. Shaun J. Berry, property owner representative. Both parties were sworn in. Attorney Fienberg related to the Board what the Planning Board had previously moved. The Board needed to decide who had jurisdiction regarding the matter stated in Article IV, 415.6.A.1. Attorney Fienberg requested a waiver to Section 415.6.A.1 from the Planning Board and there was a question as to how "Board" was interpreted. Mr. John Ryan, Town Council, drafted a letter March 26, 2002 stating that the Zoning Board had the authority to grant the waiver.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted accept jurisdiction of Case 2002:26, Article IV, Section 415.6.A.1. The vote was 4-0. Mr. Field abstained.

- C. **2002:27 – 24 Walnut Avenue, Crown Atlantic Company, LLC**, Requests an appeal from an administrative decision of the North Hampton Planning Board to permit construction of a monopole that will be less than the required setback.

- i. Jurisdiction. Properly Before the Board.
- ii. Case Presentation: Lorne Fienberg, Esquire, of The McLane Law Firm, continued with presenting the plan to build a monopole. The properties that will be affected are both interested parties who will entering into contract with the Applicant and are willing to sign a waiver of rights at to “fall Zone” protection. The Board had concerns regarding subsequent owners and the affect the tower would have on marketability of the property. The Board took notice of the limited issue as to which the Variance was being requested, i.e. “fall zone” setback waiver. The Board also took notice of the fact that future purchasers of the affected properties would be on visual notice of the tower’s presence.
- iii. Five (5) Conditions: Mr. Fienberg addressed the five (5) conditions, which must be satisfied to enable the granting of a Variance. The Board concluded that the five conditions were satisfied. The Board took particular note that the proposed location was within the “corridor” set forth in the Ordinance and two (2) members of the Board confirmed that, while serving as Planning Board members at the time of the adoption of the Ordinance, the proposal was consistant with the intent of the Ordinance as adopted. (See Applicant’s written Memorandum.)
- iv. Board Observations/Special Considerations: Mr. Shaun J. Berry signed the abutters Waiver at the Meeting. The Trustee of the Shaun G. Berry Trust shall sign a waiver of liability to Article IV, Section 415.6.A.I and return an original copy to the Zoning Board of Adjustment’s Secretary.
- v. Public Comment: None

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted grant the Variance to Article IV, Section 415.6.A.I. The vote was 4-0. Mr. Field abstained.

VI. Other Business. None

VII. Next Meeting.

The next regular meeting of the North Hampton Zoning Board of Adjustment will be held on August 28, 2002 at 7:00 p.m. in the Town Hall.

VIII. Adjournment.

Chairman Field invited a motion to adjourn.

VOTE: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to adjourn the meeting. The vote was 4-0. Mr. Field abstained.

The Meeting was adjourned at 8:30pm.

A true record,

North Hampton Zoning
Board of Adjustment

By: _____
Krista Tischendorf,
Recording Secretary