

REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON, NEW HAMPSHIRE ZONING BOARD OF ADJUSTMENT August 28, 2002

The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, August 28, 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 August 19, 2002.

Member(s) Present: Robert Field, Jr., Chairman, Mark Johnson and Ted Turchan. (3)

Member(s) Absent: Dick Wollmar and Richard Luff (2)

Alternate(s) Present: James Kierstead (1)

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 that 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.

July 17, 2002 - Regular Meeting of Board

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to accept the minutes of July 17, 2002, as presented.
The Vote was 3-0 with Alternate Board Member Kierstead abstaining.

IV. Old Business

A. **2002:26 - 24 Walnut Avenue, Crown Atlantic Company, LLC —
Request for Rehearing — filed August 13, 2002.**

- (i.) Jurisdiction. Chairman Field announced that a Motion to Rehear Case #2002:26 had been filed by the Town of North Hampton Board of Selectmen on or about August 13, 2002, pursuant to NH RSA 677:2. The Chairman declared the Motion timely filed and properly before the Board. The Chairman stated he visited the site prior to the Meeting, and invested time in preparing a package of materials dealing with the case law, and legal commentary on the grant of Rehearings, noting especially, that Rehearings should only be granted for compelling reasons. A balancing test between “fairness” to the Applicant and the Petitioner for Rehearing must be applied. He then distributed materials to all Board members and called a recess to permit a review of same. Further, the Chairman stated that Motions for Rehearing are not subject to Public Comment and are decided by the Board on the merits of the Motion. Finally, he noted that the Briefs filed by counsel to the Applicant for the Variance were complete and disclosed the existence/relationship of the “day care” center to the proposed tower site.

The Board then stood in Recess for approximately ten (10) minutes.

The Board reconvened the Meeting, noting that the concerns expressed in the Motion regarding value of abutting property may have merit. However, the Chairman expressed concern and doubt that the Board has legal jurisdiction to impose the relief requested in the Motion.

**Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to grant a Rehearing as requested in the Motion filed by the Board of Selectmen.
The Vote was 4-0.**

- (ii.) Case Presentation. Not Applicable
- (iii.) Five (5) Conditions. Not Applicable
- (iv.) Board Observations/Special Conditions. Following the Vote, the Chairman observed that there appears to be a question of law regarding the relief requested in the Motion and the Board may find it necessary to consult with Counsel as to whether the Board has jurisdiction to impose restrictions on an adjoining parcel of land which is not the subject of the Application. Abutters and Crown Atlantic were advised to attempt to resolve the issues that are of

concern to the Selectmen.

- (v.) Public Comment. As a matter of comity, the Chairman recognized Selectman Sullivan and Hines, who each made a statement as to the status of possibly achieving a Settlement with the Applicant as to easements, restrictions, and plot plans to be recorded.

Lorne M. Fienberg, Counsel for Crown Atlantic, then stated that he first learned of the Rehearing Motion two (2) days ago. Shaun G. Berry has prepared a proposed deed and easement, as to the fall zone. Attorney Fienberg learned that Attorney Ryan agrees that such deed and easement would likely satisfy the concerns of the Selectmen.

Chairman Field re-stated that this issue of granting the Rehearing was decided and Attorney Fienberg believed the issue in controversy has been resolved. Chairman Field stated that if the issue is resolved, then the Rehearing can be withdrawn, and the matter could proceed to the Planning Board for its review.

Chairman Field stated that he and the Board appreciate the Selectmen bringing their concerns on this issue to the Board, and suggested that in the future it would be advantageous to express their concerns at the time of initial hearings so that consideration of same could be addressed by the Board early in the process.

- B. Case 2002:23 – 4 Post Road, Pobama Trust, [003-102-000] 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.

Case 2002:24 – 4 Post Road, Pobama Trust, [003-102-000] 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.

Case 2002:30 – 4 Post Road, Pobama Trust, [003-102-000] Requests a Variance to Article IV, Section 411 and asks that said terms be waived to permit construction of a single family dwelling that has less than the contiguous acre of non-wetland soil.

- (i.) Jurisdiction. The Chairman indicated that Cases #2002:23; #2002:24 and #2002:30 relating to 4 Post Road, Pobama Trust, were properly before the Board and would be considered as a “unit” in that the purpose of the requests was to obtain authority to construct a residential dwelling on a “sub-standard” lot situated in multiple jurisdictions, to-wit, the Towns of North Hampton and Hampton.

In introducing the Cases, the Chairman indicated that a joint “site walk” had been taken on the parcel on June 21, 2002, at the invitation of the Trustee, Mr. Jack Murray, Jr. Participating were representatives of the Town of North Hampton Zoning Board of Adjustment, Planning Board and Conservation Commission, and from the Town of Hampton.

Further, the written opinion of the Board’s legal counsel had been requested on July 25, 2002, and received on July 31, 2002, that the Board could take into consideration the characteristics of the entire parcel as it is situated in both North Hampton and Hampton, as it considers the Variance requests.

Finally, by way of further introduction, the Chairman reported that the Hampton Planning Board (Jennifer A.B. Kimball, Town Planner) by letter dated August 22, 2002, together with enclosures, had expressed a sense of concern relating to the parcel and the action being requested of the Board by the Applicant.

- (ii.) Case Presentation. The Chairman then invited Mr. Murray to present his case to the Board. Mr. Murray indicated that he had no materials or formal presentation and that he merely anticipated the Board would provide a “yes” or “no” response based upon the materials on file. He indicated that he was personally inconvenienced by his appearance before the Board this evening and had given up the opportunity to attend a Red Sox/Yankees game.
- (iii.) Five (5) Conditions. The Chairman advised Mr. Murray that all applicants have a five (5) point burden of proof to carry with regard to applications for Variances. Mr. Murray indicated as to what those points were; and, in an effort to be helpful, and as an exception to the Board’s general policies and procedures, the Chairman identified each of the five (5) points in series and invited Mr. Murray to respond. Mr. Murray explained (i) the unusual septic requirements imposed by the State of New Hampshire which limited the available options to locate the proposed house; (ii) the open issues with the State relating to a “drainage” culvert located, apparently without an easement, on the parcel; (iii) that the buildable lot consisted of approximately ¼ acre where one (1) was required; (iv) that the wetlands buffer zone limited where the proposed house could be located; (v) the lot had been taxed as a “buildable” lot” by the Town of North Hampton; (vi) the lot had been acquired by the Trust in 1984 with the hope that some time in the future it could be developed; and (vii) that he could consider placing a mobile home on the lot should the Variance requests not be granted – a mobile home would be narrower and provide for better rear/front setback options.
- (iv.) Board Observations/Special Considerations. Chairman Field asked for

comments from the Board. Mr. Turchan commented that consideration of Case 2002:23 would appear to be unnecessary because the front setback is met and does not need to be waived. Mr. Johnson commented that there is not enough buildable, non-wetland area available to make the Lot buildable.

- (v.) Public Comment. The Chairman invited public comment in “support” of the proposal. There was none.

Public comment “against” the proposal was then invited.

Henry F. Mixter, Chairman of the Conservation Commission, expressed the Commission’s concern about wetland protection and the fact that the lot was ¼ acre vs. the required one (1) acre. Philip Wilson, Chairman of the Planning Board, indicated it was his view that in the absence of a variance, a mobile home would not be a permitted structure. Charles Gordon, Member of the Conservation Commission, indicated that the assessed value of the lot on the Town of North Hampton tax records was \$7,000. He implied that it was unlikely that such valuation represented a “buildable lot”, so called.

The Applicant was then invited to respond to the comments received from the public. He confirmed that the contiguous building area in both North Hampton and Hampton was ¼ acre and that a variance would be needed to build. As to the \$7,000. Assessed value figure, he stated that he was unable to confirm or deny such statement.

There was no further testimony to be received and the Chairman closed the Case Hearing. The Board then deliberated on the matters.

The Board found with regard to the five (5) elements, the following:

- (a) Public Interest. Granting the request will be contrary to the interest of the people of North Hampton in that it would ignore the public concern to protect and preserve wetlands, wetlands buffers and source water supply and recharge zones.
- (b) Hardship. The case presentation failed to convince the Board that “special conditions” existed that warranted its determination that private and public interests would be adversely affected should the requests be granted.
- (c) Spirit of Ordinance. The request is not consistent with the spirit of the Ordinance.
- (d) Substantial Justice. The granting of the request would result in

injustices as to the standards of the community as exhibited both in its Zoning Ordinance and in its Master Plan.

- (e) Diminished Value. It was the view of the Board that abutting properties would be diminished in value if the requested variances were granted.

Vote: Upon motion duly made by Mr. Turchan and seconded by Mr. Johnson, it was voted to dismiss Case #2002:23 Variance to Article V Section 406 to permit construction of a single family dwelling that will be less than the required setback, because the front setback requirement was met and did not need to be waived.

The Vote was 4-0.

Vote: Upon motion duly made by Mr. Johnson and seconded by Mr. Turchan, it was voted to deny Case #2002:24 Variance to Article V Section 409.9 to permit construction of a single family dwelling that will be less than the required 50 foot setback; and, to deny Case #2002:30 Variance to Article IV Section 411 to permit construction of a single family dwelling that has less than the required adjoining land.

The Vote was 4-0.

Following the vote, Mr. Murray asked when he could expect to receive a written decision. Chairman Field indicated it would be issued early in September.

V. New Business

- A. **2002:28 – 59 Mill Road, Craig & Cheri Sinclair**, [Map #003-025-000] Request a Variance to Article IV, Section 409.9 to permit construction of a two-story addition which includes a less than the required wetland setback of 50 feet
 - (i.) Jurisdiction. Properly before the Board.
 - (ii.) Case Presentation. The Applicants presented their case to the Board. Chairman Field entertained questions of the Applicants from Members of the Board.
 - (iii.) Five (5) Conditions. The Applicants addressed the five (5) conditions which must be satisfied to enable the granting of a Variance. The Applicant established a valid foundation for a “hardship” and demonstrated the difficulty the characteristics of the site presented for “a viable construction site”. The Board concluded that the five (5) conditions had been met.

- (iv.) Board Observations/Special Considerations. Mr. Turchan requested that a clean copy of the Plan be prepared and submitted for inclusion in the Case file. He also suggested that the Building Inspector do a site inspection as to the set back and precise location of the proposed addition prior to construction. Mr. Johnson indicated there was only a "corner" intrusion within the wetlands "buffer zone"
- (v.) Henry F. Mixter, Chairman of the North Hampton Conservation Commission, commented that he concurred with the suggestion that a "clean", well thought out, plan should be prepared and submitted to the Board prior to construction. Mr. Sinclair agreed with the suggestion and will provide same to the Building Inspector.

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to approve a variance to Article IV Section 409.9 to permit the construction of a two story addition which includes a wetlands setback of 38 feet plus or minus 6 inches, to be shown on a "clean" Plan to be submitted by Applicants to the Building Inspector prior to construction.

Special Conditions. The resulting non-conforming lot will remain unbuildable in the absence of any further approved variances. The Building Inspector will confirm prior to construction that the actual construction site conforms with the proposal presented by the Applicant. A "clean" plan setting forth in detail the approved building expansion proposal will be prepared and submitted by the Applicant to the Building Inspector prior to construction.

**The vote was 3-0.
Mr. Field abstained.**

- B. **2002:31 - 17 Sylvan Road, Jonathan & Elizabeth Howe** [Map #008-034-000]
Request a Variance to Article IV, Section 406 to permit construction of a one-story addition within the 25 foot setback.

- (i.) Jurisdiction. Properly before the Board.
- (ii.) Case Presentation. Ms. Elizabeth Howe presented the case to the Board. The presentation included the introduction of two (2) letters from abutters, Cronin and McGilvrey, indicating support of the Variance request.
- (iii.) Five (5) Conditions. Ms. Howe addressed the five (5) conditions which must be satisfied to enable the granting of a Variance. The Board concluded that the five (5) conditions had been met.
- (iv.) Board Observations/Special Considerations. None.

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- (v.) Public Comment. None.

Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to approve a Variance to Article IV Section 406 to permit the construction of a one story addition with a 25 foot setback.

**The vote was 3-0.
Mr. Field abstained.**

C. 2002:32 - 5 Ocean Boulevard, Gregory Miller [Map #001-011-000] Requests a Variance to Article IV, Section 406 to permit expansion of a second story on an already existing foundation and structure.

- (i.) Jurisdiction. Improperly before the Board, in that no request for the expansion of a “non-conforming” structure, pursuant to Article V, Section 501 had been applied for and/or Notice published.
- (ii.) Case Presentation. Mr. Miller began to present the Case to the Board, and was interrupted when it was discovered that necessary Variance had not been applied for.
- (iii.) Five (5) Conditions. Not Applicable.
- (iv.) Board Observations/Special Considerations. Not Applicable.
- (v.) Public Comment. None.

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to table the Variance request until the next Meeting of the Board.

**The vote was 3-0.
Mr. Field abstained.**

Chairman Field informed Mr. Miller and the Building Inspector that an additional Variance application was required to enable the Case to be properly advertised and Noticed to the general public.

- D. 2002:33 - 2 Stevens Road, William & Eileen Sims** [Map #008-077-000] Requests a Variance to Article IV, Section 501.5 to permit expansion of the same plane for addition within the 30 foot setback requirement.

Chairman Field swore in Mr. Sims and Richard Cottrell, Architect, pursuant to NH RSA 673:15.

- (i) Jurisdiction. Improperly before the Board, in that no request for the expansion of a “non-conforming” structure, pursuant to Article V, Section 501 had been applied for and/or Notice published.
- (ii) Case Presentation. After swearing in Mr. Sims, Chairman Field inquired if his request is for a “non-conforming” use because his house already is located at 29 feet of the 30 foot setback and his variance request would put the house 27 feet of the same 30 foot setback requirement. Since the house was built in 1961, the structure is “grandfathered”. Chairman Field informed Mr. Sims that he may wish to submit an Application for an “equitable waiver” to conform to a “non-conforming” structure, Article V, Section 501.5, pursuant to NH RSA 674:33.
- (iii) Five (5) Conditions. Not Applicable.
- (iv) Board Observations/Special Considerations. Not Applicable.
- (v) Public Comment. None.

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to table the Variance request until the next Meeting of the Board.

**The vote was 3-0.
Mr. Field abstained.**

- E. 2002:34 - 35 Lafayette Crossing Shopping Center/Hollywood Video, S R Weiner & Associates, LLC** [Map #007-053-000] Requests a Variance to Article V, Section 506.3(e) to permit a wall sign larger than allowed.

Chairman Field swore in Bernie Pelech, Esquire; Dushan Bouchek, Architect; Greg

Hopkins, Hollywood Video, and Mark Olenski, Hollywood Video pursuant to NH RSA 673:15

- (i.) Jurisdiction. Properly before the Board. The written Consent of W/S North Hampton Property, LLC of 1330 Boylston Street, Suite 215, Chestnut Hill, Massachusetts, the property owner, was noted.
- (ii.) Case Presentation. Mr. Boucek, Mr. Hopkins and Attorney Pelech presented the Case. Mr. Boucek indicated the sign is a mural-like painting featuring the "Hollywood Hills" in the background with 36-inch illuminated letters spelling "Hollywood" and 24-inch illuminated letters spelling "Video". Because the business is located 100 feet from Route 1, the group stressed they needed these dimensions to be able to attract/draw customers to their store; and it is in keeping with the sign and lettering standards by which Hollywood Video is identified, a trademark of sorts.

Mr. Hopkins indicated the standard neon spotlight lines are to be replaced with painted lines. This signage issue is critical to the Hollywood Video Company and they are anxious to work with the Board for a successful resolution

- (iii.) Five (5) Conditions. Attorney Pelech addressed the five (5) conditions which must be satisfied to enable granting of a Variance. The Board considered that the five (5) conditions were satisfied for a Variance, but not to the scale requested.

(a.) Board Observations/Special Considerations. The Board, while accepting that the granting of a Variance from the 144 square feet standard was reasonable, observed that the scale of the "field" and the lettering is too large, especially for a building as close to Route 1 as the subject property is located.

Chairman Field stated he recognized the trademark issue, but is very concerned about the size of the sign. There was discussion about differences in sign sizes from the Route 1 and parking lot locations. Mr. Kierstead indicated that the North Hampton sign standard is 144 square feet and stated that the Hollywood Video sign far exceeds that limit. Mr. Johnson stated it was an attractive sign but with its proximity to Route 1, he would like to see it scaled down a bit.

Chairman Field indicated the community is not happy with large signs and does not want Route 1 to be overburdened with illuminated signage. Mr.

Turchan indicated he felt the sign facing the parking lot was most important and should be the most prominent. Chairman Field indicated that the current signage requirements have, in the past, been deemed insufficient for needs such as Lafayette Crossing Shopping Center when removed a great distance from Route 1. Mr. Hopkins indicated Hollywood Video must sign the lease soon, has invested over \$20,000. into this venture already and wants to open the store for the Christmas shopping season.

Upon inquiry, the Applicant advised the Board that there were several standard “sizes” of letter signage to choose from: 48” x 32”; 36” x 24”; 30” x 20” and 24” x 12”. However, the background “field” generally was a consistent size – roughly 72” x 45”.

The Board agreed that the following Special Conditions should define the scope of the Variance.

- (a) The signage lettering for “Hollywood” will be a maximum of 30 inches high and signage lettering for “Video” will be a maximum of 20 inches high and both signs will be illuminated with non-neon backlighting only.
- (b) To maintain symmetry, the painted purple mountain background field will be reduced to 6 ½ feet by 37 feet with a 6 inch margin.
- (c) Spotlight rays will not be internally illuminated.
- (d) No X-rated or adult entertainment-type videos or materials will be offered at Hollywood Video for sale or distribution, the business having been characterized as a “family-oriented” facility.
- (e) Signage size and placement is consistent on both the west and south sides of the building.

(v.) Public Comment. None.

Vote: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to approve the Variance to Article V, Section 506.3(e) to permit a wall sign larger than allowed, subject to the following conditions.

- (a.) The signage lettering for “Hollywood” will be a maximum of 30 inches high and signage lettering for “Video” will be a maximum**

of 20 inches high and both signs will be illuminated with non-neon backlighting only.

- (b.) To maintain symmetry, the painted purple mountain background field will be reduced to 6 ½ feet by 37 feet with a 6 inch margin.
- (c.) Spotlight rays will not be internally illuminated.
- (d.) No X-rated or adult entertainment-type videos or materials will be offered at Hollywood Video for sale or distribution, the business having been characterized as a “family-oriented” facility.
- (e.) Signage size and placement is consistent on both the west and south sides of the building.

The vote was 3-0.
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 September 18, 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. Turchan, and seconded by Mr. Johnson, it was voted to adjourn the meeting. The vote was 4-0.

The Meeting was adjourned at 10:05 pm.

A true record, attest

**NORTH HAMPTON ZONING
BOARD OF ADJUSTMENT**

By: _____
Krystina Arrain,
Recording Secretary