



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
September 18, 2002

The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, September 18, 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 September 11, 2002.

Member(s) Present: Robert B. Field, Jr., Chairman; Mark Johnson, Vice Chairman; Dick Wollmar; Richard Luff and Ted Turchan. (5)

Member(s) Absent: None

Alternate(s) Present: None

Staff Present: Richard Mabey, Building Inspector and Krystina Deren Arrain, Recording Secretary

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.
- C. The Chairman announced that an audio recording of the Meeting would be maintained by the Recording Secretary and that any Applicant, or member of the public who wishes to listen to such recording, should make arrangements to do so with the Secretary.
- D. Minutes of the Meeting shall be deemed to be "preliminary" in form and unofficial until the Board votes to approve same.

II. Preliminary Matters/General Correspondence. None.

III. Acceptance of Minutes.

August 28, 2002 - Regular Meeting of Board

Voted: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to accept the minutes of August 28, 2002, as presented.

The Vote was 3-0, with Board Members Wollmar and Luff abstaining.

IV. Consideration and Adoption of revised "Application for Relief."

Chairman Field requested that the Board consider for adoption a revised (new) form of "Application For Relief" which had been circulated to Members for their consideration prior to the Meeting. Mr. Field identified several of the key differences from the prior Application and indicated that it was designed to foster a more consistent, comprehensive and detailed "land use" review process for the Town. The Application puts Applicants on notice of procedures and obligations and includes authorization granted to Members and/or their representatives to enter upon the subject premises for site review and inspection. Finally, he noted that the Building Inspector and Administrative Assistant had reviewed the proposed revision and approved same with the suggestion that it be further amended to indicate a reference to (i) Tax Map Lot # and (ii) Zoning District. [Attachment A]

On motion duly made by Mr. Turchan and seconded by Mr. Johnson, after discussion, it was, unanimously

Voted: To adopt, effective as of September 18, 2002, the revised "Application For Relief," in the form presented, amended to reflect the addition of entry space for referencing (i) Tax Map Lot # and (ii) Zoning District.

The Vote was 5-0.

V. Continued Business

- (a) **2002:26 - 24 Walnut Avenue, Crown Atlantic Company, LLC**
Rehearing — Granted August 28, 2002.

Chairman Field reported he had been advised that the Board of Selectmen ("BOS") and the Applicant had reached a mutually agreeable Settlement as to the concerns, which the BOS raised in its Motion for Rehearing.

Selectman Lloyd Sullivan was invited to speak on the Settlement. Mr. Sullivan indicated that a Settlement had been reached on Tuesday, September 17, 2002, and, that the request of the Selectmen for a Rehearing was being voluntarily withdrawn. He then presented a photocopy of a document titled "Fall Zone Easement Deed,"

which was as yet unsigned. He requested that the Board (i) incorporate by reference the "Easement Deed" into its formal record of the Case, and, (ii) amend its prior approval Vote to indicate specific reference to the Settlement. He further requested that the amended Vote require that the Easement be properly executed and recorded as a condition to the Approval.

Lorne M. Feinberg, Esquire, then spoke on behalf of the Applicant and confirmed the Settlement had been reached and that Shawn J. Berry had agreed to execute the "Easement Deed."

Chairman Field then ruled that, at the request of the Petitioner, the BOS, the Rehearing granted by the Board on Case #2002:26, was withdrawn and would not be acted upon by the Board.

Chairman Field then invited Mr. Johnson, the maker of the original motion, to consider adopting the amendment as proposed by Selectman Sullivan to the Variance approval Vote of July 17, 2002. Mr. Johnson moved that such an amendment become part of the Vote; and Mr. Luff, who had seconded the original motion in July, seconded the motion to amend.

After further discussion, the Board unanimously

Voted: To amend its vote of July 17, 2002, on Case #2002:26, as follows:

"Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted to grant the Variance to Article IV, Section 415.6 A.I, upon condition that, prior to such Variance becoming effective, and pursuant to the Agreement reached on September 17, 2002, among the Selectmen, Shawn J. Berry and the Applicant, the "Fall Zone Easement Deed," in the form presented to this Meeting, be properly executed and recorded in the Rockingham Country Registry of Deeds and that a copy of the recorded deed then be made a part of the permanent record of Case #2002:26."

The Vote was 4-0. Mr. Field abstained.

Following the vote, Mr. Feinberg confirmed the position of his clients Verizon/Crown Atlantic Company, LLC that each wished to work cooperatively with the Town of North Hampton municipal authorities and boards to identify a second (2nd) tower site to be located in the eastern part of Town, and to construct a tower and install the equipment necessary, at the sole expense of Verizon/Crown Atlantic, LLC, such that "full wireless coverage" for the people of North Hampton could become a reality. Such tower would be in addition to the first (1st) site at "I-95," so called, which was the subject of the Meeting on July 17, 2002.

It was noted that the matter would now be considered by the Town of North Hampton Planning Board for further deliberation and action under its jurisdiction.

(b) Case #2002:32 – 5 Ocean Boulevard

Gregory S. Miller [Map #001-011-000] request(s) Variance(s) to (i) Article V, Section 501.5, for the expansion of a “non-conforming” use, and to (ii) Article IV, Section 406, for the 50-foot front and 35-foot side setback in order to expand the second story and deck on already existing foundation and structure.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Miller presented the case to the Board. The presentation included the introduction of photos illustrating the impact of the desired improvements to his current home.
- (iii) Five (5) Conditions. Mr. Miller 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. Mr. Luff commented he felt the needs of Mr. Miller’s growing family for additional living space was quite reasonable. Mr. Turchan stated and Mr. Wollmar agreed that the improvements would enhance the neighborhood. Mr. Johnson questioned if, with the extension of the cantilevered deck, was the rear setback requirements met. Mr. Miller stated it was 62 feet from the end of the deck to the rear property line.
- (v) Public Comment. None.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted (i) to approve a Variance to Article V, Section 501.5 to expand a “non-conforming” use, and (ii) to approve a Variance to Article IV, Section 406 to permit relief from the 50-foot front and 35-foot side setbacks in order to expand second story on already existing foundation and structure.

The Vote was 4-0. Mr. Field abstained.

(c) Case #2002:33 – 2 Stevens Road

William & Eileen Sims [Map #008-077-000] request(s) (i) an Equitable Waiver of Dimensional Requirements under NH RSA 674:33-a, and (ii) Variance(s) to Article IV, Section 406 to permit expansion on the same plane for an addition that will encroach by an additional foot within the 30-foot front setback, and (iii) Variance(s)

to Article V, Sections 501.1 and 501.5 to expand a “non-conforming” use.

Voted: Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to grant an Equitable Waiver for Dimensional Requirements of a “non-conforming” lot.

The Vote was 4-0. Mr. Field abstained.

The Chairman then ruled that the Applicant’s Request for Variances to Article V, Sections 501.1 and 501.5 referring to expansion of a “non-conforming” use required no action because the Equitable Waiver was granted as requested.

The Board then considered the Request for Variance for Article IV, Section 406.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Sims presented the case to the Board. The presentation included the introduction of photos illustrating the house position on this lot . Mr. Richard Correll, Architect, provided drawings of the proposed expansion that would be used to create much needed storage space above the garage.
- (iii) Five (5) Conditions. Mr. Sims addressed the five (5) conditions, which must be satisfied to enable the granting of the Variance(s). The Board concluded that the five (5) conditions had been met.
- (iv) Board Observations/Special Considerations. Mr. Field expressed concern that the space above the garage may at some time be used for living space. Mr. Johnson felt the Board should not restrict Mr. Sims’ use of the above-garage area. Mr. Sims guaranteed that the use of the area is only for storage.
- (v) Public Comment. Mr. George Rooney, 1 Stevens Road, North Hampton, commented that in the three (3) years Mr. Sims has lived in the neighborhood, he has improved his home and property and, as such, has improved the neighborhood.

Voted: Upon motion duly made by Mr. Luff, and seconded by Mr. Turchan, it was voted to approve a Variance to Article IV, Section 406 to permit expansion on the same plane for an addition that will encroach by an additional foot within the 30-foot front setback.

Special Conditions attached to the Variance approval direct that the storage area being created above the garage shall neither be converted nor otherwise modified into “living space,” and any further expansion of that space will be subject to coming before the Board for consideration of such

additional variances.

The Vote was 4-0. Mr. Field abstained.

VI. New Business

(a) Case #2002:34 – 131-A Atlantic Avenue

Dorsey Baron Revocable Trust of 1993 [Map# 006-085-000] request(s) (i) Variance(s) to Article V, Section 501.5 for expansion of a “non-conforming” use, and (ii) Variance(s) to Article V, Section 513.1 for the dimensional requirements of a single-family lot for an “accessory” apartment.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Charles C. Baron presented the case to the Board. The presentation included a packet that included architectural drawings, septic plans, pictures of the property, and letters of support from his neighbors. *[Attachment B]*.
- (iii) Five (5) Conditions. Mr. Baron addressed the five (5) conditions which must be satisfied to enable the granting of Variance(s). The Board concluded that the five (5) conditions had been met.
- (iv) Board Observations/Special Considerations. Mr. Field asked if the septic system was adequate to support the expansion. It was represented by Mr. Baron to the Board that Ambit Engineering Inc. had verbally informed him that the State had approved their proposed septic system.

Mr. Field inquired if the “accessory” apartment, at a later date, would become available for rent by a non-family member. Mr. Baron answered that it would not be rented and very probably would be incorporated as additional living space for the main house. Mr. Luff inquired how the Board could attach and enforce a special condition on the “accessory” apartment reverting back to the main house. Mr. Field commented that as a matter of Public Interest there exists a bias in the Town’s Master Plan and Zoning Ordinance discouraging the creation of independent apartments within or from single family residences. However, the town does not wish to foster circumstances whereby its elder citizens are forced to abandon their homes because of unusual or special circumstances that befall them. Mr. Luff acknowledged the soundness of such considerations.

- (v) Public Comment. It was noted from members of the Baron family that they had included letters of support from their neighbors in the case presentation. Additionally, Mr. Baron stated that he had received a phone call from his neighbor, George Atkins of 135 Atlantic Avenue, North Hampton who

expressed support for approval of this Variance.

Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to approve (i) Variance(s) to Article V, Section 501.5 for expansion of “non-conforming” use; and (ii) Variance(s) to Article V, Section 513.1 for the dimensional requirements of a single-family lot for an “accessory” apartment.

Special Conditions attached to the Variance direct that the house would revert back to a single-family residence when neither Charles C. nor Dorsey B. Baron are in permanent residence. The property owner at such time will be required to apply to the Board for consideration of a variance to continue an “accessory” apartment use.

The Vote was 4-0. Mr. Field abstained.

(b) Case #2002:35 – 17 Pine Road

Richard & Brenda Tharp [Map #007-008-000] request(s) Variance(s) to Article IV, Section 409.9 for construction of a driveway and garage located 15 feet from the edge of an inland wetland where a 50-foot setback is required.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Ms. Tharp presented the case to the Board. Upon review of the application, the Board commented that dimensions for the front, side and rear setbacks were missing from the application.
- (iii) Five (5) Conditions. Ms. Tharp addressed the five (5) conditions, which must be satisfied to enable the granting of a Variance. The Board tentatively concluded that the five (5) conditions had not been met. Specifically, the proposed driveway is 15 feet from the side setback that is a low-lying, wetland area.
- (iv) Board Observations/Special Considerations. Henry F. Mixter, Chairman, Conservation Commission, indicated that the Conservation Commission had not received notice of this matter in time to permit them to conduct a walkthrough of this site. Mr. Field confirmed that he visited the site and that there appeared to be a rivulet on the property with water flowing through it. He also indicated that there appeared to be a culvert passing under the road through which source water flowed. Mr. Field inquired if the Tharps would consider a pervious paving surface. Ms. Tharp indicated they wanted the asphalt surface for a basketball court. Mr. Turchan asked if the driveway could be nudged over to the left away from the low-lying area.

Mr. Field suggested that the Board consider acting to table the application and ask the Conservation Commission to review the Application and bring their observations and comments to the October meeting. Mr. Field advised that the Application presents a difficult situation and the Board must act to balance the interest of the Applicants as well as the need of the Town to protect against the encroachment of wetlands and wetland setbacks. He suggested the Applicants may wish to reconsider their options and further, they may wish to engage professional assistance when they return to further present their case in October.

- (v) Public Comment. Conservation Commission Chairman Mixter concurred with the suggestion that the Conservation Commission investigate the site and report to the Board in October.

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

The Vote was 4-0. Mr. Field abstained.

- (c) Case #2002:36 – 249 Atlantic Avenue
Pamela Mixon [Map #007-127-000] request(s) a Special Exception to Article IV, Section 405 for a home occupation to operate a barber shop on premises.

Chairman Field temporarily suspended the case when first called because Ms. Mixon was not in attendance. The Board resumed the case when she arrived shortly thereafter. Ms. Mixon misunderstood and thought the Board meeting was scheduled on September 25th.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Ms. Mixon presented the case to the Board. Because the property is zoned I-B/R, her intent is to lease the property from Ms. Holly Blake as both a residence and as a “home occupation.” She stated that she plans to operate her barber shop as a service business, not as a retail business. Additionally, Ms. Mixon indicated that she does not wash hair and would not be using any washing facility on premises and thereby would not be creating a septic problem. She also pointed out the circular nature of the driveway and available area for parking of vehicles.

She currently employs one (1) barber with intentions to employ two(2) additional barbers. Her hours of operation will be Monday through Friday, 8

AM to 5 PM, Thursday Evenings 5 PM to 7 PM and Saturdays 8 AM to 12 Noon.

- (iii) Five (5) Conditions. Not Applicable.
- (iv) Board Observations/Special Considerations. Mr. Field stated the Special Exception is personal to Ms. Mixon and does not run with the parcel. Mr. Luff commented that because of the I-B/R zoning for the location, the Special Exception consideration will be deemed to include Article V, Section 507. The Board concluded that the Applicant had carried the burden of proof to support her case.
- (v) Public Comment. None.

Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Luff, it was voted to grant your Request for Special Exception pursuant to Article IV, Section 405 to Article V, Section 507.

The Vote was 4-0. Mr. Field abstained.

(d) Case #2002:37 – 122 Lafayette Road

Nancy Briggs [Map #017-004-000] request(s) (i) Variance(s) to Article V, Sections 501.2 for changing a “non-conforming” use and (ii) Section 501.4 for reinstatement of a non-conforming use that has been discontinued for a period in excess of a year.

- (i.) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Ms. Briggs presented the case to the Board. Her plan is to open a cheese shop in the location of her former tenant “Mobile Mania.” Because the structure was in the process of being remodeled and restored for more than a period of 1-1/2 years, she explained that she was concerned that the Variance that applied to the previous retail operation may have expired.
- (iii) Five (5) Conditions. Ms. Briggs addressed the five (5) conditions, which must be satisfied to enable the granting of a Variance.
- (iv) Board Observations/Special Considerations. Much discussion ensued about the necessity of the applicant requiring these variances. Since the property was zoned as I-B/R, Mr. Johnson felt the Application did not require any action. Mr. Turchan commented that the issue of abandonment did not hold true because the property was being remodeled and had not been abandoned, and that the delay had resulted from the extent of the undertaking.

(v) Public Comment. None.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, the Board declined jurisdiction and dismissed the Request for Variance to Article V, Section 501.2 for changing a “non-conforming” use for reason that the property was used previously as a mixed use retail/residential structure.

The Vote was 4-0. Mr. Field abstained.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, the Board declined jurisdiction and dismissed the Request for Variance to Article V, Section 501.4 for reinstatement of a “non-conforming” use that has been discontinued for a period of more than a year for reason that, in the spirit of the ordinance, the property was under reconstruction for safety enhancements and not considered “abandoned.”

The Vote was 4-0. Mr. Field abstained.

VII. Other Business.

Processing ZBA Applications

Mr. Field expressed his concern that more detail and accuracy was needed in the ZBA application that is presented to the Board for consideration. He pointed out that standards for the application have been in existence for some time and that the level of conformance for the same has been declining. He observed that the newly adopted Application called attention to such standards and he suggested the Building Inspector be more critical in his review of applications filed. He specifically pointed out the need for,

- (a) Clear and concise plot plans,
- (b) Accurate reference to applicable variances being requested,
- (c) Possibility of “flagging or staking” variance locations to demonstrate the elements of the proposal to all parties, especially abutters,
- (d) A checklist of required components for ZBA applications that applicants sign upon submission,
- (e) Extra care taken that the Conservation and Heritage Commissions are included on all abutters lists,
- (f) Building Inspector and Planning and Zoning Administrator to classify as “incomplete” applications if they neglect to contain all required information.

Mr. Field’s intent in raising this issue was to emphasize the importance of the Board receiving complete and accurate applications for consideration and for the Public to have complete applications available to it prior to any meeting. The Board does not wish to drag

out a case or deny an application on lack of complete information. Both the Building Inspector and the Planning and Zoning Administrator's priority is to better facilitate the application process so that resolution from the ZBA is efficient and timely.

VIII. Next Meeting.

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on October 16, 2002 at 7:00 p.m. in the Town Hall.

IX. Adjournment.

Chairman Field invited a motion to adjourn.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Wollmar, it was voted to adjourn the meeting.

The Vote was 4-0. Mr. Field abstained.

The Meeting was adjourned at 9:35 PM.

A true record, attest

**NORTH HAMPTON ZONING
BOARD OF ADJUSTMENT**

By: _____
Krystina Arrain,
Recording Secretary