



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
October 16, 2002

Page 1 of 7

The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, October 16, 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 October 7, 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: Krystina Deren Arrain, Recording Secretary; Richard Mabey, Building Inspector, was absent due to a death in the family.

Chairman Field called the meeting to order at 7:00 p.m.; 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) members.

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. Chairman Field 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.
- E. Chairman Field made note that one of the applications under consideration was not submitted on the newly approved “Application For Relief” form. He commented that the Board Secretary indicated the form was not available at the time the Applicant’s submission. Chairman Field indicated that although there is a transition period in using the new form, the Board insists that the appearing on the new Form apply to this Meeting. One of the conditions that will come up before the Board this evening is the issue of disclosing prior Board activities on a parcel.

II. Preliminary Matters/General Correspondence. None.

III. Acceptance of Minutes.

September 18, 2002 - Regular Meeting of Board

Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to accept the Minutes of September 18, 2002, as presented. The vote was 5-0, with no abstentions.

IV. Continued Business

(a) 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.

Chairman Field noted that this Case had been tabled from the September 18, 2002 Meeting. He also indicated the Applicants had advised the Board staff that they were not prepared to come before the Board at this Meeting and requested that the matter be once again tabled until the November 20, 2002, meeting. Chairman Field noted that it is the policy of the Board to table/continue applications for only two (2) meetings. If an Applicant exceeds this time requirement, he/she will be required to re-apply to the Board for the requested relief.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted to table for a second (2nd) time, the Variance request until the next Meeting of the Board. The Vote was 4-0. Mr. Field abstained.

V. New Business(a) Case #2002:38 – 20 Lafayette Terrace

Merrill Family Trust / J. Carl and M. Theresa Merrill [Map# 021-014-000] request a Variance to Article V, Section 501.2 for a change of a non-conforming use to be able to create two (2) non-conforming lots with existing structures where one (1) non-conforming lot currently exists. The Applicants request a variance to Article IV, Section 406 requesting (a) relief from the 35-foot side setback at 24 Lafayette Terrace where a 18 foot side setback exists, and relief from the 35-foot side setback at 20/22 Lafayette Terrace where a 14 foot side setback exists in order to be able to establish a lot line between 20/22 and 24 Lafayette Terrace where none currently exists, thereby creating two (2) lots in place of the one; and (b) requesting relief from a frontage requirement of 250 feet where frontage of 89.55 feet exists for 24 Lafayette Terrace and 61.32 feet exists for 20/22 Lafayette Terrace. The Applicants also request a Variance to Article IV, Section 406.4(a) asking for relief from a minimum lot size for a duplex requiring 100,000 square feet when the lot for 20/22 Lafayette Terrace would contain 36,718 square feet. The property is located at 20/22 and 24 Lafayette Terrace within the Industrial-Business/Residential [I-B/R] zoning district.

- (i) Jurisdiction. The Board questioned its jurisdiction in that several conditions attaching to a prior Variance granted to the Applicant had not been met.
- (ii) Case Presentation. Attorney Mary Ganz introduced herself representing the Merrill Family Trust. Chairman Field noted that the Applicant had not conformed in using the correct form, but in this case only, that such requirement will be waived as a “transitional” matter. In the future all applicants will submit their applications using the “Application For Relief” adopted by the Board on September 18, 2002.

Chairman Field revealed that the Applicant had been granted a variance in January, 2000, that included a condition of removing/demolishing five (5) cabins. He inquired of Attorney Ganz as to whether she or her client could attest if that condition had been met. The Applicant, J. Carl Merrill indicated that prior to selling that property to Mr. John Kimball, he had demolished two (2) cabins. Mr. Merrill stated that he had included a condition in the Purchase and Sale Agreement with Mr. Kimball that the remaining three (3) cabins were to be demolished. Mr. Merrill felt that he had met his requirement and once he sold the property to Mr. Kimball, the demolition of the remaining cabins was not his responsibility. He felt it became Mr. Kimball’s responsibility. Chairman Field reminded Mr. Merrill that the Variance was granted to him and the satisfaction of the conditions was his responsibility, not solely Mr. Kimball’s. Also, Chairman Field asked why Mr. Merrill had

not enforced the provisions of the Purchase and Sale Agreement referring to the demolition of the remaining cabins within the conditional period. The answer went unanswered.

Chairman Field referred to the "Doctrine of Clean Hands" in which an individual coming before the Board should do so only when they are free of any violations. He suggested that since Mr. Merrill had not complied with the Board's conditions in the January 2000 Variance request, perhaps the Board should not hear this matter at this time.

Chairman Field suggested that Mr. Merrill consider withdrawing his request and resolve with Mr. Kimball the issue of the demolition of the remaining cabins and reconsider the substance of the Application before Board action. Mr. Merrill indicated he had not intentionally disregarded the conditions of the prior Variance. He felt he had discharged his responsibility when he sold the property. Chairman Field stated that Mr. Merrill could not discharge his responsibility under a Variance by just selling the property; the responsibility remains with the individual to whom the Variance was granted to ensure compliance. Chairman Field stated that he believed the Code Enforcement Officer had authority to administratively revoke, or otherwise suspend, the Variance granted to Mr. Merrill in January, 2000, for reasons of "non-compliance."

Chairman Field indicated that in the past similar issues of "non-compliance", followed by requests for Board relief have been brought before the Board. The Board now intends to be more diligent in preventing this type of activity. He stated that expansion of a "non-conforming use" is not supported by the case decisions of the New Hampshire Supreme Court and the Applicant has a heavy burden of proof in this matter. Chairman Field suggested that Mr. Merrill withdraw his Application and resolve the "non-compliance" issue of his Variance before he approaches the Board about another variance. Attorney Ganz requested a few minutes to consult with her client. Chairman Field recessed the Meeting for ten (10) minutes..

Following the recess, Attorney Ganz suggested that the Case be tabled until the December meeting, but Chairman Field indicated the December meeting may not be held and suggested the January meeting. Mr. Merrill indicated he would make immediate arrangements with Mr. Kimball to demolish the cabins and wanted to have his case heard by the Board in November. As a gesture of commitment, Mr. Merrill indicated he would secure a performance bond to meet his requirement. Chairman Field indicated that the Board prefers that Mr. Merrill's appearance before the Board occur after the cabins are removed and when the lots are in full compliance. He indicated that State septic rules from the Department of Environmental Services (DES) under ENV-Ws 1005.03 indicated that minimum lot size is 20,000 sq. ft. Chairman

Field suggested that Mr. Merrill refer to this requirement when considering moving forward with his Case.

(iii) Action on the Matter:

Chairman Field stated Mr. Merrill has until October 28, 2002 to consider moving forward onto the November agenda. He also suggested that Mr. Merrill get the new copy of the "Application For Relief" which is available at the Town Office. At the request of the Applicant, the matter was suspended until the November 20th meeting and will appear under "Continued Business" on the Agenda for such meeting.

(b) Case #2002:39 – 53 Lafayette Road

Harley Seaton [Map #007-060-000] request(s) Variance(s) to Article IV, Section 409.8(A) asking for relief from the 75-foot setback requirement to 54 feet for replacement of a failing septic system within the Wetlands Conservation District. The property is located at 53 Lafayette Road within the Industrial-Business/Residential (I-B/R] zoning district.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Seaton indicated that he wanted to remedy a failing septic system on his property, Slumber Manor Hotel. When his septic engineer and the State inspector considered his limited options, their recommendation was to place the system in a location that would be least detrimental to the surrounding wetlands. In choosing the proposed location, the northeast corner of the septic system would be within 54 feet of the wetlands which is contrary to the Town ordinance of a 75-foot wetland setback. Mr. Seaton represented that his Case had been reviewed by the North Hampton Conservation Commission on Tuesday, October 8, 2002 and that the plan had been endorsed by the Commission.
- (iii) Five (5) Conditions. Ms. Seaton read from a prepared statement to address the five(5) conditions which must be satisfied to enable the granting of a Variance. Such statement is incorporated by reference into these Minutes. The Board concluded that the five (5) conditions had been met.
- (iv) Board Observations/Special Considerations. Chairman Field asked when and under what condition did he learn of the failure of his system. Mr. Seaton indicated he had received notification from Paul Charron, the former Building Inspector. In Spring 2001, Home Depot intended to deed the wetland surrounding Lafayette Crossings. During soil testing, it was discovered that the wetlands had been compromised and e-coli bacteria were found. To locate the source of the contamination, septic systems of surrounding properties had to be

tested. As a result, Mr. Seaton's septic system was tested and the system was deemed a failed system.

Chairman Field indicated his concern that it has taken Mr. Seaton nearly a year to remedy this problem. Mr. Seaton indicated he had done all he could and this was the earliest he could apply to the Board for a Variance. Mr. Turchan indicated there is a lag in State septic approval and that lengthy processing would bring it within the August/September timeframe. Mr. Wollmar also indicated that there are so many Town and State rules in place that hinder a smooth resolution to such a situation. Chairman Field indicated his concern about critical situations such as these not being promptly addressed by the Building Inspector, Town officials and Applicants. Chairman Field also noted that we should assess the responsibility of landowners in reference to these types of issues. Mr. Seaton indicated that he unaware that the "septic system" State approval would also require further review by the Board. He learned about the need for a Variance only when he spoke with the Building Inspector.

(v) Public Comment. None.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Wollmar, it was voted to approve a Variance to Article IV, Section 409.8(A) for relief from the 75-foot setback requirement to 54 feet for replacement of a failing septic system within the Wetlands Conservation District. The Vote was 4-0. Mr. Field abstained.

Chairman Field requested that a copy of the Minutes of the October 8, 2002 Meeting of the North Hampton Conservation Commission become part of the permanent record of Case 2002:39.

VI. Next Meeting.

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday November 20, 2002 at 7:00 p.m. in the Town Hall.

VII. Adjournment.

Chairman Field invited a motion to adjourn.

Voted: Upon motion duly made by Mr. Turchan, 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 7:52 PM.

A true record, attest

**NORTH HAMPTON ZONING
BOARD OF ADJUSTMENT**

By: _____
**Krystina Arrain,
Recording Secretary**