



REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON

ZONING BOARD OF ADJUSTMENT

November 20, 2002

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The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, November 20, 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 November 9, 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

Mr. Field called the meeting to order at 7:04 PM; 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; Form of Application.

- 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.
- E. Chairman Field made note that the form of "Application For Relief", adopted by the Board on September 18, 2002, prescribes certain actions to be taken, and assumes several representations are made, by the Applicant as part of the filing of an "Application For Relief". Applicants who are in "non-compliance" with prior orders, findings or decisions of the Board, will, in most instances, have any requests for further relief deferred until full compliance is attained or waived by the Board.

II. Preliminary Matters/General Correspondence

- A. **Case 2002:35 – Richard and Brenda Tharp, 17 Pine Road, North Hampton, NH 03842**
In a letter dated November 19, 2002, the Tharps requested a withdrawal of their Application "without prejudice."

Voted: Upon motion duly made by Mr. Turchan, and seconded by Mr. Wollmar, it was voted to accept the request of Richard and Brenda Tharp to withdraw their

Application “without prejudice”.
The Vote was 4-0. Chairman Field abstained.

III. Acceptance of Minutes.

October 16, 2002 - Regular Meeting of Board

Chairman Field stated there are open matters regarding the Minutes of the October 16, 2002 Meeting; and, accordingly, action on the Minutes will be deferred to the next regular Board meeting. (January 15, 2003)

IV. Continued Business:

A. Case 2002:38 – Merrill Family Trust/ J. Carl and M. Theresa Merrill, 20 Lafayette Terrace, North Hampton, NH 03842

In a letter dated November 18, 2002, J. Carl Merrill requested a continuance of his Application to the January 15, 2003 Meeting. Chairman Field provided a brief review of the October 16, 2002, Meeting, indicating that Mr. Merrill had not met the conditions of the January 2000 Variance granted to him by the Board; and, accordingly, the Board was not prepared to accept and/or act on his Application until such conditions were met.

Voted: Upon motion duly made by Mr. Luff, and seconded by Mr. Turchan, it was voted to accept the request of J. Carl Merrill for a continuance of his Application to the January 15, 2003, Meeting.
The Vote was 4-0. Chairman Field abstained.

It was noted that such Continuance is the first (1st) of two (2) which, when requested by the Applicants, are customarily granted by the Board.

V. New Business

A. Case #2002:40 – 186-A Lafayette Road, Keith Sheehan, Rivers & Sheehan Construction Company, 186-A Lafayette Boulevard, North Hampton, NH 03862 [Tax Map #017-087-000], requests (A) a Variance to Article V, Section 501.2 to allow for an expansion of a “non-conforming” use for multi-use of a residence, office and cabinet shop and requests (B) a Variance to Article V, Section 506.3(C) for construction of a sign larger than 40 sq. ft. The property is located at 186-A Lafayette Road within the I-B/R [Industrial-Business/Residential] zoning district.

- (i) Jurisdiction. Although a proper matter for Board consideration, the Board determined the Application to be incomplete in that it lacked the prescribed supporting documents and plans.
- (ii) Case Presentation. Prior to Mr. Sheehan’s presentation, Mr. Johnson commented that as a business competitor of the Applicant, perhaps he should consider recusing himself from sitting on the matter. Chairman Field, noted the disclosure and invited the Applicant to comment and react upon same. Neither Mr. Sheehan nor Mr. Rivers objected to Mr. Johnson remaining seated to hear the case. As well, the remaining members of the Board had no objections to Mr. Johnson remaining seated for the Hearing.

Mr. Sheehan stated he signed a lease on the property and “cleaned it up” after it had been used as a “drug den” and perhaps for other illegal activities. He indicated the property had been used in a number of capacities and in recent years as an office, beauty salon and hotel office. His intent was to use it as a residence/business office with a woodworking shop in the basement.

- (iii) Action on the Matter. Upon reviewing the Application, Mr. Field indicated that only a building plan of 186-A Lafayette Road had been submitted in support of the Application. He understood additional buildings are located on the lot in issue. A complete Application must include a “*site plan showing, at a minimum, lot lines, existing structures, septic system and leach field, well, setbacks, size of property, frontage, and other pertinent information, including, but not limited to, conservation easements, Current Use enrollment, and any other restrictions or encumbrances of record*” which had not been submitted. Chairman Field explained that additional information is required before the Board can responsibly consider hearing a Variance request.

Mr. Wollmar and Mr. Johnson observed that perhaps the Applicants might wish to consult with the Building Inspector and reconsider the form of relief requested. Each noted that a Special Exception to Article V, Section 507 for a “Home Occupation” might be appropriate relief. Mr. Sheehan requested that the Board table his Application until the next meeting of the Board.

**Voted: Upon motion duly made by Mr. Turchan and seconded by Mr. Johnson, it was voted to Table the case until the next meeting of the Board.
The Vote was 4-0. Chairman Field abstained.**

- B. Case #2002:41 – 4 Post Road. Pobama Trust, P.O. Box 359, Hampton, NH 03842 [Tax Map #003-102-000]**, requests (A) a Variance to Article IV, Section 406 seeking relief from a 30-foot front setback when a front setback of 20 feet exists, and requests (B) a Variance to Article IV, Section 411 to seek relief from the requirement of one (1) contiguous acre of non-wetland soil for construction of a dwelling. The property is located at 4 Post Road within the R-1 [High Density] zoning district.

I. Preliminary Determination. (“Material Change”)

Chairman Field opened the discussion stating that on August 28, 2002, a similar Application for Variance(s) filed by the Applicant had been denied as to the subject parcel. He stated that the Board could not proceed with this new application until the Applicant demonstrated to the satisfaction of a majority of the Board that “significant and material changes of circumstances” exist. Attorney Denise A. Poulos, of Donahue, Tucker & Ciandella, Attorneys At Law of Exeter, NH identified herself as representing the Applicant, Pobama Trust. Chairman Field also made reference to the standards of review as articulated by the New Hampshire Supreme Court in the cases of Fisher v. City of Dover and Morganstern v. Town of Rye.

Attorney Poulos stated that the Application for Relief submitted by the Applicant was a “materially different” proposal and requested that the Board provide Pobama Trust with the opportunity to present their case. She indicated that during the August 2002 Meeting, and, from her client’s perspective, the Board had seemed to express a very “clear message” to avoid building on, and to protect, the wetland area. She indicated that in the new request the Applicant had relocated the house and redesigned the septic system so that none of the wetland or wetland buffer area was affected or impinged upon. Attorney Poulos certified that the “septic system” had received State of New Hampshire Department of Environmental Services septic approval. Chairman Field indicated that the Applicant’s impressions may, or may not, accurately characterize the opinion of the Board.

Mr. Mabey, the Building Inspector, indicated the requirement for rear yard setback from “wetland” buffer area had been met. Both Mr. Wollmar and Mr. Luff indicated they were not present during the Hearing of the case on August 28, 2002.

Mr. Johnson commented that he believed the Applicant has made a considerable effort and he is open to hearing the Application. He added that he does not want this case to come before the Board again and wondered if the proposed house was a “qualifying structure”. Mr. Turchan indicated he is willing to hear the Application. In addition he questioned if the Town of Hampton would require a Building Permit.

Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Johnson, it was voted to hear the matter upon finding a case demonstrating “material change of circumstances” had been made.

The Vote was 4-1. Chairman Field voted in opposition, believing that in his opinion, the standards as articulated in Fisher and Morganstern had not been met by the Applicant.

II. Case Consideration:

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Attorney Poulos stated Pobama Trust purchased the property in 1979 from Bill Clark. In 1984 the lot was subdivided for the Precourts. The Zoning Ordinance over the years, has significantly changed restricting Applicant’s ability to build on this house lot. As ordinances became more restrictive, the Applicant realized that, in order to obtain a Building Permit, he would be required to go before the Zoning Board of Adjustment. The relocation of the proposed house places it closer to Post Road; and, as a result, a Variance for a front yard setback is requested. The size of the proposed house compliments those currently existing in the neighborhood. Additionally, most of the neighborhood houses do not meet the setback requirements because they pre-date the current Ordinance. Attorney Poulos presented to the Board a copy of a letter written in support of the Applicant from Mark and Jane Precourt, 2 Post Road, dated September 8, 2002. She then read an excerpt from a letter purportedly from Mederic Bernier, 6 Post Road, dated September 16, 2002, in which he is represented to state his support of the Applicant’s case. Attorney Poulos stated that she would not submit a copy of the Bernier letter to the Board, as it contained personal and private comments. When advised that the Board had no capacity with which to verify its alleged content, she responded that the Board could “weigh the evidence” in whatever manner it wished.

Attorney Poulos addressed the issue of the requirement of one (1) contiguous acre of upland. She stated that her client cannot meet the requirement; and, hence, requests approval of a Variance because the land cannot be used for “anything else other than a house lot”. Placing the one-acre restriction on this land would constitute “a taking of the land”. Chairman Field questioned whether such view was correct as a matter of law.

- (iii) Five (5) Conditions. Attorney Poulos addressed the five (5) conditions, and the Board concluded that the five (5) conditions had been met for granting Variances for both (i) Article IV, Section 406 for the “front yard” setback, and (ii) Article IV, Section 411 for the one-acre of “contiguous upland”.
- (iv) Board Observations/Special Considerations.

RE: Section 406 – 30-foot front setback -- Mr. Wollmar, Mr. Johnson, Mr. Turchan and Mr. Luff each commented that they felt the Applicant with the relocation of the

proposed house and septic system had reasonably attempted to maintain the requirements and the intent of the “wetland setback”. As a result, the structure encroached 10 feet into the front setback. Additionally, each concluded that the front setback was consistent with the other “setbacks” in the neighborhood.

RE: Section 411 – One (1) acre contiguous upland/non-wetland. According to historical recollection, Mr. Turchan commented the original focus of the Ordinance was to avoid the destruction of wetlands by developers. The Board understood the applicant wanted to build only one (1) house on the entire 17 acre parcel (the majority of which is located in Hampton). The “contiguous” one-acre ordinance was enacted in 1991 and the wetland setback ordinance was enacted in 1986 or later. Chairman Field cautioned that the Ordinance “speaks for itself”.

Mr. Turchan commented that there are a number of homes in North Hampton that do not meet the current lot size requirement. Because the Applicant had owned the property for 23 years and it was taxed as a buildable lot, there was an implied expectation that a home could be built. The Zoning Ordinance had changed over the years and he found himself constrained because he did not have the one (1) acre of contiguous upland.

Chairman Field stated that it is important to have the Tax Assessment record to confirm whether or not the lot is “buildable”. At 8:45 PM the Meeting recessed for 10 minutes. At 8:55 PM the meeting was reconvened. Mr. Mabey returned from the Town Offices with a copy of the Tax Assessment record for Map/Lot #003-102-000 and it was determined that the property had apparently been assessed, and described, as a “buildable lot”.

(v) Public Comment. None.

Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Luff, it was voted to approve a Variance to Article IV, Section 406(A) for relief from the 30-foot setback requirement to 20 feet.
The Vote was 4-0. Chairman Field abstained.

Voted: Upon motion duly made by Mr. Turchan, and seconded by Mr. Luff, it was voted to approve a Variance to Article IV, Section 411 for relief from the requirement of one (1) contiguous acre of non-wetland soil for construction of a dwelling.
The Vote was 4-0. Chairman Field abstained.

C. Case #2002:42 – Barlo Signs, 158 Greeley Street, Hudson, NH 03051 [Tax Map #007-053-000] requests a Variance to Article V, Section 506.3(e) to allow for the installation of one (1) 43-square foot internally illuminated wall sign for Cleary Cleaners where two (2) 12-square foot each wall signs are permitted. The property is located at 33-49 Lafayette Road [Lafayette Crossing Shopping Mall] within the I-B/R [Industrial-Business/Residential] zoning district.

(i) Jurisdiction. Properly before the Board.

(ii) Case Presentation. Mr. Don Reed, Senior Designer, of the Barlo Sign Company, introduced himself to the Board. He commented that there has been a reduction in the size of the sign from what was originally proposed. The size has been reduced from 43-square feet to 35-square feet. This recent revision was made to maintain the consistency with the other signs in the shopping area, such as Hallmark, Shaw’s and Dress Barn. Mr. Reed provided the Board with a visual computer generated representation [the sign illuminated in dark hours] of the proposed sign.

- (iii) Five (5) Conditions. Mr. Reed addressed the five (5) conditions. The Board concluded that the five (5) conditions had been met.
- (iv) Board Observations/Special Considerations. None
- (v) Public Comment. None.

Voted: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to approve a Variance to Article V, Section 506.3(e) to allow the installation of one (1) 35-square foot internally illuminated (“non-blinking”) wall sign for Cleary Cleaners at 33-49 Lafayette Road [Lafayette Crossing Shopping Mall].
The Vote was 4-0. Chairman Field abstained.

D. Case #2002:43 – North Hampton Acura, 137 Lafayette Road, North Hampton, NH 03862 [Tax Map #017-041-000] requests a Variance to Article V, Section 506.3(e) to allow for the installation of a third (3rd) sign composed of individually illuminated letters of 18 inches in height spelling “North Hampton Acura” encompassing a total area of 37.5 square feet where two (2) 12 square foot each wall signs are permitted. The property is located at 137 Lafayette within the I-B/R [Industrial-Business/Residential] zoning district.

- (i) Jurisdiction. Properly before the Board, but not appropriate for consideration in that the Application For Relief was incomplete for reason of lack of prescribed supporting documents and plans.
- (ii) Case Presentation. Mr. Richard Shulman, President of North Hampton Acura introduced himself to the Board. He indicated that his facility has undergone renovations on the dealership façade. He has two signs on the property — one freestanding sign at the entrance and another on the southbound side of the showroom. Northbound vehicles approaching the dealership cannot determine that they are approaching the facility because neither of the two signs is sufficiently visible from the northbound lane. Hence, Mr. Shulman requested a third sign located on the northbound side. He commented that northbound vehicles either miss the dealership entrance or make a dangerously fast right-hand turn into the dealership. Mr. Shulman felt a sign on the northbound side would help avoid a high speed, hard braking right-hand turn.

Chairman Field noted that the prescribed Site Plan was not included as part of the Application. He commented it is difficult to judge the impact of the signage without reference to the other signs on the property. At 9:20 PM the meeting was briefly recessed while Mr. Mabey retrieved the North Hampton Acura site plans from the Town Office. At 9:30 PM the meeting reconvened.

Mr. Mabey presented the Site Plan to the Board. Upon review of the Plan, the Board requested the square footage of the original signs and the square footage of the proposed sign. Mr. Shulman indicated the original sign was 48-square feet and the new sign was 32-square feet. The third (3rd) sign he was requesting would exceed the original square footage; hence he applied for the variance. Mr. Luff asked if the third (3rd) sign was an afterthought. Mr. Shulman responded that it was not until after construction of the dealership redesign was completed that they noticed there is a lack of adequate business identification from the northbound lane of Route 1.

Chairman Field indicated that since the dealership had been in business for a number of years, he anticipated other variances had been issued for “non-conforming” signage in the

past. He indicated that the Application for Relief requires that an Applicant bring all pertinent information, including a past zoning history of the lot before the Board. Chairman Field, joined by Mr. Johnson, suggested that Mr. Shulman may wish to request the Board to table his Application pending gathering additional information to complete the Application.

Mr. Shulman requested that his Application be Tabled until the next meeting.

**Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to Table the case until the next Meeting of the Board.
The Vote was 4-0. Chairman Field abstained.**

VI. Next Meeting.

A. December Holiday.

**Voted: Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to cancel the December 18, 2002 Meeting in keeping with the long standing practice of not holding a ZBA Meeting during the December Holiday period.
The Vote was 4-0. Chairman Field abstained.**

B. January Meeting.

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday January 15, 2003 at 7:00 p.m. in the Town Hall. It was noted that a schedule of Meetings for Calendar Year 2003 had been prepared by the Recording Secretary and would be acted upon at the January 15, 2003, Meeting of the Board for adoption.

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. Chairman Field abstained.**

The Meeting was adjourned at 10:09 PM.

A true record, attest

**NORTH HAMPTON ZONING
BOARD OF ADJUSTMENT**

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