



**REGULAR MEETING MINUTES**  
**TOWN OF NORTH HAMPTON**  
**ZONING BOARD OF ADJUSTMENT**  
**February 26, 2003**

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The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, February 26, 2003 at the North Hampton Town Hall to conduct a Regular Meeting of the Board ("Meeting"). Notice of the Meeting had been properly posted, and noticed in the Portsmouth Herald on February 13, 2003.

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

Member(s) Absent: None

Alternate(s) Present: Craig Kelleher, DVM (1) – as noted.

Staff Present: Richard Mabey, Building Inspector. Krystina Deren Arrain, Recording Secretary, was not present due to illness.

Chairman Field called the Meeting to order at 7:00 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**

- A. Chairman Field explained the standard 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 "definitively" to approve same.

- E. 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”. Applicant’s 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.** None.

III. **Acceptance of Minutes.**

- A. January 15, 2003 - Regular Meeting of the Board

**Voted:** Upon motion duly made by Mr. Wollmar, and seconded by Mr. Turchan, it was voted to accept the Minutes of the Regular Meeting of the Board of January 15, 2003, in the form distributed to the Members.

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

IV. **Continued Business**

- A. **Case #2003:01 – Joseph Walsh, Friends of Centennial Hall, P.O. Box 200, North Hampton, NH 03862 (Tax Map #014-049-000)**, requesting (A) a Variance to Article V, Section 506.3(e) for the installation of two (2) 3-foot by 5-foot signs, two (2) 3-foot by 4-foot signs, and one (1) 42-foot by 3-foot banner sign attached to building walls; and (B) a Variance to Article V, Section 506.4(a) and 506.4(b) for a 4-foot by 4-foot freestanding, sandwich-type, board sign. The property is located at 105 Post Road within the R-1 [Residential—High Density] zoning district. Action on this Application was continued from the January 15, 2003, Meeting, due to an inadvertent administrative publishing error.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Joseph Walsh, representing the Friends of Centennial Hall, presented the case in favor of granting relief. He stated that (i) the 3-foot by 5-foot and 3-foot by 4-foot signs were necessary to identify the building, events and tenant activities within; (ii) the Zoning Ordinance was incomplete and unclear as to signage for public assembly type buildings owned by private interests, (iii) vehicular traffic passing by required larger and multiple signs to avoid creating of a traffic safety hazard, (iv) restoration of the building was in the public interest and would enhance the neighborhood, (v) the fundraising banner would be a part of a new fund raising effort for restoration, and (vi) the “sandwich-style” sign would be used for Special Events.

- (iii) Five (5) Conditions. Mr. Walsh 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. Wollmar noted that Centennial Hall Friends is on the NH Registry of Historical Buildings; and that, at one point in time, the Board was considering seeking a National Historic Register designation. Mr. Wollmar was concerned that the proposed signage might be viewed as being inconsistent with such efforts/intentions. Other Board members were concerned with the lack of symmetry on an otherwise architecturally balanced structure. Others were concerned with night lighting, and whether or not it was in the public interest to permit the large “fund raising” banner to be used for an indefinite period.
- (v) Public Comment. Mr. Stanley Knowles, 3 Cherry Road, North Hampton, commented that he supported granting the Application.

**Voted:** Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted to grant (i) Variance(s) to Article V Section 506.3(e), of the Zoning Ordinance, for the installation of (a) four (4) 3-foot by 5-foot wall signs; and (b) a 42 foot by 3-foot banner style wall sign subject to limitations; and (ii) Variance(s) to Article V Section 506.4(a) and Section 506.4(b), of the Zoning Ordinance, for a 4-foot by 4-foot freestanding “sandwich-type” board sign, subject to Special Conditions.

**Special Conditions**. The 3-foot by 42-foot banner sign is conditionally approved for a 6-month period with three (3) additional consecutive 6-month period renewals not to exceed twenty-four (24) months in the aggregate from the date of approval. Applications(s) for renewal(s) shall on each occurrence be submitted to, and subject to the approval of, the Building Inspector, upon satisfactory demonstration by Applicant of continued need. The four (4) 3-foot by 4-foot wall signs may be illuminated with a constant light source from dusk until midnight. The “sandwich-type” board sign must be positioned on the premises in such manner as to avoid obstruction of “sight lines” for vehicular traffic.

The Vote was 3-0. Mr. Wollmar and Chairman Field abstained.

**B. Case #2003:02 – Jay McFarland, McFarland Realty Trust, dba Hampton-Ford**

**Hyundai, 177 Lafayette Road, North Hampton, NH 03862** [Tax Map #017-011-000] – Requesting (A) a Variance to Article V, Section 506.3(c) for the installation of two (2) ground/freestanding signs when one (1) is allowed for the parcel, and requesting (B) a Variance to Article V, Section 506.3(e) for five (5) wall signs where two (2) are allowed per business. The property is located at 177 Lafayette Road within I-B/R [Industrial-Business/ Residential] zoning district. This Application was tabled from the January 15, 2003, Meeting at the request of the Applicant.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Jay McFarland commented that the dealership building is located a far distance from its entrance from Lafayette Road. As a consequence, he believed it was important for vehicular safety, visibility and identification to have five (5) sign on the building. In addition, Mr. McFarland noted that because his dealership included two franchises, Ford and Hyundai; there existed the need for two freestanding/ground signs at the dealership entrance. Mr. Al Silva, V.P. of Sign-A-Rama also appeared on behalf of the Applicant and offered testimony as to the size and style of the signage. He acknowledged that Sign-A-Rama had an interest in the Variance in that it was contracted to erect the signage.
- (iii) Five (5) Conditions. Mr. McFarland 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. Members of the Board noted the general policy of the Board to take into consideration the setback of a business from Lafayette Road and the need for visibility by the traveling public.
- (v) Public Comment. None.

**Voted:** Upon motion duly made by Mr. Johnson, and seconded by Mr. Luff, it was voted to approve a Variance to Article IV, Section 506.3(c), of the Zoning Ordinance, for two (2) ground/freestanding signs; and (b) a Variance to Article V, Section 506.3(e), of the Zoning Ordinance, for five (5) wall signs.

The Vote was 4-0. Chairman Field abstained.

## V. New Business

- A. **Case #2003:03 – Charles & Teresa Fredette, 2 Cherry Road, North Hampton, NH 03862** [Tax Map #018-024-000] - Requesting a Variance to Article IV, Section

406 for relief from 35-foot side yard setback; where current structure is located 8 feet from the edge of the property. Applicant requests an additional 2 feet encroachment with the side yard from the present encroachment in order to rebuild and replace an existing garage that is 22 feet wide. The property is located at 2 Cherry Road within the R-1 [High Density Residential] zoning district.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Charles Fredette commented that current structure is in disrepair and is unsafe as a consequence of age and needs to be replaced. Currently the structure is located eight (8) feet from the property line and his request would place it six (6) feet from the property line. The additional two (2) feet requested would allow for construction to of interior stairs to attic storage space. Because of utility easements and the slope of the land in the rear of the current structure, Mr. Fredette added that he was very limited to location of the re-built garage. A deed setting forth the cited easements was included with the record.
- (iii) Five (5) Conditions. Mr. Fredette submitted a prepared written Statement and from such Statement 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.
- (v) Public Comment. Mr. Stanley Knowles, 3 Cherry Road, North Hampton, commented that he supported granting the Fredette Application. Mrs. Lillian Kimble, Cedar Road, North Hampton, commented that she supported the Fredette Application.

**Voted:** Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to grant a Variance to Article IV, Section 406, of the Zoning Ordinance, for relief from 35-foot side yard setback in order to replace the existing garage and situate it within six (6) feet of the side yard boundary.

**The Vote was 4-0. Chairman Field abstained.**

- B. Case #2003:04 – Thomas P. McCarthy, 76 Atlantic Avenue, North Hampton, NH 03862** [Tax Map #006-005-000] - Requesting a Special Exception to Article V, Section 507 to conduct a home occupation – architectural design and general contracting business at his residence. The property is located at 76 Atlantic Avenue

within the R-2 [Medium Density Residential] zoning district.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Craig N. Salomon, Esquire, speaking on behalf of the Applicant commented that the “home occupation” conducted at 76 Atlantic Avenue included a drafting table and an office for Mr. McCarthy. No permission for such office use has been granted by the Board. (Three (3) photographs of the existing and intended “office use” were introduced as evidence by Attorney Salomon). Attorney Salomon added that Mr. McCarthy rarely meets clients or sub-contractors at his home office. Occasionally the Applicant needs to fabricate items (cabinets/shelving, etc.) on site, but during those instances, the activity is conducted inside the home. He further added that the Applicant does not intend to add a “home occupation” sign or to have outside storage of any building materials, but that he does have a “Bobcat” bucket loader and trailer parked in his driveway. The Applicant does not have any inside parking/storage on his property. The Applicant’s general contracting activities amount to his maintaining a home office. Attorney Salomon noted that when fabrication activities exist, “noise” would be the only issue. He further noted that, according to testing performed by the Applicant, when the equipment is operating the noise level is 50 dba [decibel range on the A-scale] at the property line. Attorney Salomon commented that the 50 dba is a very low noise emission. None of the fabricated items are sold at the home site, and the Applicant transports the fabricated items to the various construction sites on which he is working.

Attorney Salomon commented that noise levels precipitated a letter of complaint from a neighbor, and thus the intervention of the Building Inspector. He asserted that the noise was not a result of his “home occupation” activities, but rather work he was doing on his home as a homeowner. Regarding vehicles parked on the property, Attorney Salomon noted that each of the four family members drive their own vehicle, thus numbering four (4); a son employed in the “home occupation” also parks his vehicle; the Applicant’s truck; and then the Bobcat which the Applicant stated he was willing to relocate. Attorney Salomon added that the Applicant has been using the “Bobcat” for his own personal use rather than for any “home occupation” activities.

- (iii) Board Observations/Special Considerations. The Chairman noted for the record that letters in opposition to the Applicant were received from the following individuals: (1) Floortje Dykstra Walther, 78 Atlantic Avenue; (2) Mr. Gene Corbett, 82 Atlantic Avenue, and (3) Mr. Brad Johnston, 87 Atlantic Avenue. Mr. Turchan expressed sympathy for the neighbors regarding the issue of noise and traffic. Mr. Wollmar commented that the

Applicant had to meet the requirements of Section 507 – Home Occupation. Mr. Wollmar indicated the “Bobcat” had another use such as snow removal and suggested reducing the number of vehicles because of the small area for parking. Mr. Luff agreed with Mr. Wollmar and asked if parking conditions could be added to relieve the neighbors’ concerns. Mr. Johnson indicated the Applicant has the right to work on his own home as any homeowner, but it may not be appropriate for any activities associated with his subcontracting business. Chairman Field added that he realizes it is difficult to differentiate from personal homeowner activities and those of the business when they are conducted on the same site, yet he felt the site was possibly being overused for commercial activity and the number of vehicles should be limited if it was to be compatible with the well defined neighborhood.

- (iv) Public Comment. Mr. Roger Stolley, 191 Atlantic Avenue, stated that Mr. McCarthy worked at his home site remodeling, and expressed his support for the home occupation. Mr. James Sovich, 79 Atlantic Avenue, expressed his support for the home occupation. Letters of support from (1) Jonathan B. Holden, 65 Post Road, (2) Mr. Patrick McNulty, 85 Atlantic Avenue and (3) David Van Patten, President, Dare Mighty Things, 1000 Market Street, Bldg. One, Suite 102, Portsmouth, NH, were entered into the public record.

Mrs. Floortje Dykstra Walther, 78 Atlantic Avenue, North Hampton, spoke in opposition adding that in February 2002, there was outside storage of construction material and cabinets. Because she and the Applicant share a common driveway she is very concerned about the traffic and number of vehicles parked on the Applicant’s property.

Attorney Michael Donahue, representing the next door neighbors, Mr. and Mrs. James P. Weldon who are currently in South Carolina, submitted a letter from Mr. and Mrs. Weldon, dated February 14, 2003, which he requested the Chairman to read into the record. Chairman Field complied with the request. Attorney Donahue noted that the Special Exception for “home occupations”, in this case a subcontracting business, does not limit the amount of activity; and as the business grows, it would become inappropriate for this residential site. He added that since the Applicant’s non-conforming lot is devoid of trees, the use is extremely visible. Added to that, the shared 15-foot driveway right-of-way from Atlantic Avenue is inappropriate for this amount of activity. The ordinance is designed to allow individuals to work out of their homes, but he felt the magnitude of this “home occupation” and site is inappropriate and if the home occupation is approved it will create more problems for the driveway.

Mr. Weldon’s son, residing at 17 Atlantic Avenue, North Hampton, commented that when visiting his parents, on more than one occasion (five or

ten times) he observed the sound levels indicated to him an industrial or commercial type activity.

Because the Weldon property is located set back from Atlantic Avenue, Attorney Donahue commented that the Weldons' view the Applicant's property from the rear and they view all the activity that they believe is excessive. He offered the Applicant's deed into the record. He illustrated that the 15-foot right-of-way [ROW] should be limited to residential use even though the ROW does not make that indication.

Mr. Gene Corbett, 82 Atlantic Avenue, commented that he heard noise emanating from the McCarthy property and supported his neighbors who objected to the noise levels. Mr. Brad Johnston, 87 Atlantic Avenue, stated he was opposed to the Application. Mr. Armand Minutelli, 83 Atlantic Avenue, stated he was opposed to construction activity at the site. Mrs. Floortje Dykstra Walther, 78 Atlantic Avenue, stated that their common driveway is used in excess and frequently individuals from the McCarthy property have trespassed by backing their vehicles onto her property.

Attorney Salomon, representing the Applicant, repeated that the Application is not requesting outside storage or outside construction activities. He re-emphasized that activities associated with the "home occupation" will be conducted inside the dwelling.

At the invitation of the Chairman, none of the witnesses was able to specifically identify noise or fabrication as a commercial rather than private/personal use activity. However, several witnesses were able to identify the general activities of the Applicant as "commercial or business" in character.

Mr. Field read to the audience, Section 601 that pertains to "Special Exceptions."



**Voted:** Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was voted to grant a Special Exception to Article V, Section 507, of the Zoning Ordinance, to conduct a “home occupation” – architectural design and general contracting business office, subject to Special Conditions.

Special Conditions. The Special Exception granted to the Applicant for use of the premises to conduct a “home occupation” shall be limited as follows:

(a) The “home occupation” shall consist of, and be operated in accordance with, the following:

- (i) An architectural design and general contracting business office to be conducted substantially in the manner as demonstrated in three (3) photographs submitted by Applicant to the Board;
- (ii) No commercial/business use of handheld, or shop related or fixed, power tools, or similar equipment, shall be permitted or used in, on, or about the premises;
- (iii) No more than five (5) vehicles of any type shall be permitted on the premises at any given time; and
- (iv) All construction related vehicles and/or equipment, including, but not limited to, a “construction trailer” and/or “Bob Cat” front end loader, shall be removed from the premises, and, in the future, no construction related vehicles and/or equipment, shall be parked, stored or used, on the premises, in connection with the approved “home occupation.”

**C. Case #2003:05 – Brian Blake, BFP LLC, dba Blake Chevrolet, 25 Lafayette Road, North Hampton, NH 03862, [Tax Map #003-087-000]-** Requesting a Variance to Article V, Section 506.3(e) for five (5) wall signs where two (2) are allowed. The property is located at 25 Lafayette Road within I-B/R [Industrial-Business/ Residential] zoning district.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mr. Brian Blake presented plans and demonstrated that the dealership building is located a considerable distance from Lafayette Road behind an existing Mitsubishi dealership and the entrance is from Cedar

Road. As a result, he believed it was important for visibility and identification to have five (5) sign on the building visible from Lafayette Road.

- (iii) Five (5) Conditions. Mr. Blake 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. Chairman Field noted that signage variance requests are frequently before the Board and that the Building Inspector has been requested to maintain a record of "signage" variances granted in order to provide the Board with a sense of equity and proportion as it addresses such request. The Board noted that the Applicant had significantly improved the appearance and presentation of the Mitsubishi site.
- (v) Public Comment. Mrs. Lillian Kimble, Cedar Road, North Hampton, was in favor the requested variance.

**Voted:**       **Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to grant a Variance to Article V, Section 506.3(e), of the Zoning Ordinance, to approve signage that exceeds the allowed square footage for the five (5) wall signs where two (2) are allowed.**

**Special Conditions. All signs shall be internally illuminated, if at all, and non-blinking.**

**The Vote was 4-0. Chairman Field abstained.**

Chairman Field announced he would recuse himself from Case #2003:06 for the reason that, in the past, he had been professionally involved with a matter involving one of the Applicants. He requested Vice Chairman Johnson to conduct the Meeting in his stead, and then requested Alternate, Craig Kelleher, DVM, to serve as the fifth (5<sup>th</sup>) Board Member.

- D.       Case #2003:06 – Clara F. Mixer & Richard Fowler, 24 Ocean Boulevard, North Hampton, NH 03862** [Tax Map #001-040-000]- Requesting a Variance to (A) Article IV, Section 406 for relief from thirty-five (35) foot front setback to a front setback of 23 feet and (B) Article IV, Section 409.9 for relief from 75/100-foot shoreline wetlands buffer under conditions where a 2<sup>nd</sup> floor cantilevered deck imposes 10 feet into the buffer zone. The property is located at 24 Ocean Boulevard within the R-2 [Medium Density Residential] zoning district.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Mark E. Belliveau, Esquire, of the law firm of Pierce & Atwood, began the presentation on behalf of the Applicants. He introduced Clara F. Mixter, co-Applicant, and her husband, Henry F. Mixter, along with Dan Cheever, the prospective buyer of said property. Mr. Cheever's hope is to build a house on the said lot.

Attorney Belliveau indicated that the Applicants had previously filed for a Variance and Special Exception to the Little Boar's Head Zoning Board of Adjustment on February 13, 2003, and were approved on both issues with the condition that they receive approval from this Board as well as compliance with all the requisite state and federal regulations. He further added that there is a disagreement over the location of the property line as it abuts Route 1A between the NH DOT and the Applicants. This disagreement affects the measurement of the front setback for the property.

The prospective buyer situated the house as close to the front property line as possible to meet the wetland setback in light of environmental restrictions of the Town, State and Federal requirements. The side setbacks are adequately met. Attorney Belliveau submitted computer generated representations of the proposed house structure to Board members.

- (iii) Five (5) Conditions. Attorney Belliveau 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.
- (v) Public Comment. None.

**Voted:** Upon motion duly made by Dr. Kelleher, and seconded by Mr. Turchan, it was voted to grant a Variance to Article IV, Section 406, of the Zoning Ordinance, for relief from the thirty-five (35) foot front setback to a front yard setback of twenty-three (23) feet.

The Vote was 4-0. Vice Chairman Johnson abstained.

**Voted:** Upon motion duly made by Mr. Turchan, and seconded by Mr. Luff, it was voted to grant a Variance to Article IV, Section 409.9, of the Zoning Ordinance, for relief from the 75/100-foot shoreline wetlands buffer where

a 2<sup>nd</sup> floor cantilevered deck encroaches 10 feet into the “buffer zone”.

**The Vote was 4-0. Vice Chairman Johnson abstained.**

Chairman Field thanked Dr. Kelleher and Vice Chairman Johnson for their assistance and resumed the Chairmanship of the Meeting.

**VI. Next Meeting.**

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday, March 19, 2003, 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. Luff, it was voted to adjourn the Meeting.**

**The Vote was 5-0.**

The Meeting was adjourned at 11:09 PM.

A true record, attest

**NORTH HAMPTON ZONING  
BOARD OF ADJUSTMENT**

By: \_\_\_\_\_  
Krystina Deren Arrain,  
Recording Secretary