



**ORGANIZATIONAL AND  
REGULAR MEETING MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
April 16, 2003**

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The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, April 16, 2003 at the North Hampton Town Hall to conduct an Organizational and Regular Meeting of the Board ("Meeting"). Notice of the Meeting had been properly posted, and noticed in the Portsmouth Herald on April 4, 2003.

Member(s) Present: Robert B. Field, Jr., Chairman; Mark Johnson, Vice-Chairman; Richard Luff; Ted Turchan; and John Anthony Simmons. (5)

Member(s) Absent: None.

Alternate(s) Present: Dick Wollmar. (1)

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 7:02 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:**

Mr. Field indicated that, due to the limited Agenda, the following Standards of Rules of Procedure would be noted only in the Minutes, and would not be addressed to the audience.

- 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.

**I. Organization and Structure of Zoning Board of Adjustment:**

Chairman Field welcomed John Anthony Simmons, Sr. a recent appointee of the Board of Selectmen, to the Board of Adjustment. He also recognized Dick Wollmar for his appointment as an Alternate and thanked him for his many years of prior service as a full Board member. Mr. Field noted for the Record that Mr. Simmons had been sworn to his duties before the Town Clerk on or about March 26, 2003; and, Mr. Wollmar on or about April 16, 2003. Chairman Field stated that the Board would defer taking action to elect officers until the next Meeting; and, accordingly, that the present officers would continue pro tem in office until the May 21, 2003 Meeting, at which time it is intended that an election be held.

**II. Preliminary Matters/General Correspondence:**

Chairman Field noted receipt of three (3) communications:

- III. Letter dated March 25, 2003**, received from Messrs. Donahue, Tucker & Ciandella relating to the Notice of Decision in Case #2003:04, and suggesting that Paragraph IV of such Notice may be in error.

Chairman Field concurred with the observation that Item #IV referred to Variances and Case #2003:04 involved action on a request for a Special Exception. He indicated the inadvertent clerical error will be corrected and a Notice of Decision re-issued.

**Voted: Upon motion duly made by Mr. Turchan, and seconded by Mr. Luff, it was voted to accept the proposed change to the Notice of Decision for Case # 2003:04.**

**The Vote was 3-0. Mr. Simmons and Mr. Field abstained.**

- (ii) Letter dated April 15, 2003**, received from Messrs. Donahue, Tucker & Ciandella

relating to Case #2003:04, and the Request for Rehearing filed on behalf of the Applicant on or about, March 26, 2003. Chairman Field noted that the substantive issues raised in the letter would be addressed at the time of the formal consideration of the Request and would be left on file until such time.

- (iii) **FAX dated April 16, 2003**, Christopher L. Boldt, Esquire, of the Donahue, Tucker and Ciandella firm representing his clients, James P. Weldon, Sr. and Mary V. Weldon, presented to the Board a FAX dated April 16, 2003, in which his clients purport to authorize the filing of an Appeal of Administrative Decision relating to a Building Permit issued by the Building Inspector on March 28, 2003, to Mr. Thomas P. McCarthy for the premises which are also the subject of Case #2003:04.

Chairman Field noted receipt of such FAX and confirmed with Mr. Mabey, Building Inspector, that the provisions of NH RSA 676:6 would, in the opinion of Mr. Mabey, be applicable to this matter.

No formal actions were taken by the Board as to Item (ii) and Item (iii) above.

#### IV. **Acceptance of Minutes.**

- A. March 19, 2003 - Regular Meeting of the Board.

**Voted: Upon motion duly made by Mr. Luff, and seconded by Mr. Johnson, it was voted to accept the Minutes of the Regular Meeting of the Board of March 19, 2003, in the form distributed to the Members.**

**The Vote was 3-0. Mr. Simmons and Mr. Field abstained.**

#### V. **New Business.**

Chairman Field indicated that the sole item of formal business on the Agenda is consideration of a Request For Rehearing filed by Wholey & Pelech, on or about March 20, 2003, on behalf of Thomas P. McCarthy, in Case #2003:04. (It was noted that the matter was Noticed as Case #2003:08. Because it is a Rehearing Request the matter will retain its original identifying number, Case #2003:04).

Mr. Simmons recused himself from consideration of the Rehearing Request for reason that he may have a possible conflict of interest and for the reason that he had not been a participant at the original Hearing. Mr. Wollmar, now an Alternate, was seated for the Rehearing Request, as he had participated in the original Hearing on February 26, 2003.

**Case #2003:04 – Request for Rehearing, Thomas P. McCarthy, 76 Atlantic Avenue, Tax Map #006-005-000**, requesting modification of the special conditions placed upon the granting of the Special Exception for a Home Occupation, Article V, Section 507. The property is located at 76 Atlantic Avenue within the R-2 [Medium Density Residential] zoning district.

Mr. Field recognized the presence of Attorneys Bernard Pelech and Christopher Boldt. He reported that he had requested a "transcript" of the Hearing and had not yet received it. Chairman Field recommended tabling action on the Request for Rehearing until a transcript was received. Mr. Wollmar referred to Article VII, Section 702 of the Zoning Ordinance, and indicated that the Board Minutes are a legal document and the Board should proceed with the Rehearing at this time. Chairman Field stated the issue before the Board is not whether or not to conduct a Rehearing, but, rather, to determine if a sufficient predicate foundation, i.e. substantial and material new evidence that was not available at the time of the Hearing and/or mistakes of law, to granting a Rehearing was present in the filing of Attorney Pelech. It would be improper to conduct a Substantive Review at the Meeting. Mr. Luff asked for clarification of the Rehearing Procedure and agreed with Mr. Wollmar that the Board should proceed with Rehearing Request. Procedural clarification was provided. Chairman Field then stated that Rehearing Request appeared to make references to testimony and evidence introduced at the Hearing, according to reports received by him from Ms. Deren Arrain, and had been prepared with the benefit of the tape recording of the Meeting. His recollection was that some of the assertions set forth in the Request may be inconsistent from that which occurred at the Hearing and that it was his judgment it would be best to confirm the text of the Hearing such that accurate assessments could be made. He indicated that the Minutes do not constitute a verbatim record.

Mr. Turchan also reported that there may be some inconsistencies.

Further, Mr. Field stated he was reasonably confident that, no matter how the matter is decided by this Board, it was likely that the Case would be appealed to the Rockingham County Superior Court; and, if so, it was his opinion that the record should be as accurate as possible.

Mr. Wollmar made a Motion then that the Request for Rehearing be granted. The Motion was seconded by Mr. Turchan. Mr. Wollmar was invited to discuss his Motion.

Mr. Wollmar stated that he was interested in Rehearing the Case because he was not happy with the content and tone of the letter from Attorney Pelech and further believed that the Board had made a proper and correct decision.

**Upon further discussion Mr. Wollmar requested withdrawal of his Motion. Mr. Turchan, as the second, accepted and the Motion was withdrawn.**

**Mr. Wollmar then made a Motion, seconded by Mr. Turchan to deny the Rehearing Request by citing and reading Article VI, Section 601 of the Zoning Ordinance.**

Mr. Turchan commented that the Applicant had agreed to the Special Conditions set forth in the Decision.

A vote on the Motion was then taken.

**The Vote was 1-3. Mr. Luff abstained. The Motion failed.**

Chairman Field then entertained a Motion to Table the Request until the May 21, 2003, Meeting in anticipation of receiving a “transcript” of the original Hearing on the matter.

**Vote: Upon motion duly made by Mr. Johnson, and seconded by Mr. Turchan, it was voted to Table action on the Rehearing Request until the May 21, 2003 Meeting.**

**The Vote was 3-0 in favor of tabling the Request for Rehearing on Case #2003:04, until May 21, 2003. Mr. Wollmar and Mr. Field abstained.**

At the request of Town Administrator, Michael Pardue, Chairman Field then invited Attorneys Pelech and/or Boldt to provide a “transcript” of Case #2003:04 to the Board as presented on February 26, 2003, in order to expedite and facilitate the process. Ms. Floortje Dykstra Walther also requested that a copy of the hearing be sent to her legal counsel, Stephen Ells, Esquire. Mr. Field Agreed to send copies of the “transcript” as requested once he reviewed the “transcript”. A copy of the “tape” would have to be obtained as provided by statute. Attorney Pelech then stated that he would like to receive a copy of the transcript when completed. Attorney Boldt requested both a copy of the “transcript” and an audio copy of the February 26, 2003, Hearing of Case #2003:04. Neither Attorney Pelech, nor Boldt gave any indication that they would accept the invitation to assist with providing a “transcript”.

Following the Vote, Mr. Wollmar requested to be recused from any further deliberations on Matter 2003:04 as it was his opinion that his prior comments may have compromised his objectivity. His request was noted.

At 7:43 PM, Mr. Wollmar retired from the Meeting and Mr. Simmons was re-seated.

**VI. Next Meeting.**

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday, May 21, 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. Luff, and seconded by Mr. Johnson, it was voted to adjourn the Meeting.

**The Vote was 5-0.**

The Meeting was adjourned at 7:47 PM.

A true record, attest

**NORTH HAMPTON ZONING  
BOARD OF ADJUSTMENT**

By: \_\_\_\_\_  
Richard Mabey, Building Inspector  
Recording Secretary, pro tem