



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
May 21, 2003

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The Town of North Hampton Zoning Board of Adjustment ("Board") met on Wednesday, May 21, 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, on or about, May 8, 2003, and noticed in the Portsmouth Herald on May 10, 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: Samuel Checovich and Jennifer Lerner (2)

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

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:

- 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 the Recording Secretary would maintain an audio recording of the Meeting 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. The standards prescribed in RSA 91-A will control access to such records.

- 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 on a showing of good cause by the Applicant.

II. Organization and Structure of Zoning Board of Adjustment:

Chairman Field stated that the Board would defer taking action to elect officers until later in the Meeting in order to enable the Board to first address the primary matters of public business on the Agenda.

III. Preliminary Matters/General Correspondence:

- A. Chairman Field refreshed the recollection of the Board on matters relating to Case #2003:04. He stated that the initial Notice of Decision had contained an error which was believed to have been corrected by a Revised Notice, dated April 18, 2003. However, in preparing for this Meeting the Chairman noted a “computer/word processing” error, and, accordingly, a further correction to such Notice of Decision was prepared and delivered in hand to Bernard Pelech, Esquire, counsel for Thomas P. McCarthy, immediately prior to the Meeting.
- B. Chairman Field further noted that it had been brought to his attention by the Recording Secretary that there was a substantive omission in the content of the Notice, as posted and published, for Case #2003:08 [Joan Nordstrom]. Because of this omission, Chairman Field stated that such case must necessarily be postponed until the June 18, 2003 Meeting. Mr. Field apologized for the administrative error. The Notice will be re-posted and re-published at no expense to the Applicant. Mr. Simmons requested that Mrs. Nordstrom’s case be heard as the first of the evening. Chairman Field commented that since the case was postponed from the May meeting it would, by custom, be the first item on the June agenda.
- C. Chairman Field then noted the presence of Mrs. Floortje Walther in the audience and inquired as to whether or not she had received a copy of the Case #2003:04 “Transcript” as promised from the Town Administrator, as his inquiry as to the matter had not yet been answered. Indicating that she had not, a copy of such Transcript was delivered to her in hand by the Chairman.
- D. Chairman Field then noted that Ms. Jennifer Lerner had first notified him just prior to the Meeting of her appointment as an Alternate on the Board. He welcomed and introduced her and thanked retired Alternate, James Kierstead, for his contributions during the period of his service.

IV. Acceptance of Minutes:

- A. April 16, 2003 - Regular Meeting of the Board.

Voted: Upon motion duly made by Mr. Simmons, and seconded by Mr. Luff, it was voted to accept the Minutes of the Regular Meeting of the Board of April 16, 2003, in the form distributed to the Members on, or about, April 25, 2003.

The Vote was 5-0.

V. New Business:

- A. Case #2003:04 – Request for Rehearing, Thomas P. McCarthy, 76 Atlantic Avenue, Tax Map #006-005-000, requesting a Rehearing to consider a modification to 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.

Chairman Field noted that this case had been continued from April 16, 2003, because at such time the Board had not yet secured a “Transcript” of the February 26, 2003 Hearing. Board Member Simmons’ prior request to be recused from Case #2003:04 and Case #2003:09 was noted by the Chairman and Mr. Simmons stepped down. Alternate Samuel Checovich joined the Board in his stead.

Chairman Field stated that 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 to Applicant at the time of the Hearing, and/or mistakes of law, to granting the Request for Rehearing (“Request”) was present in the content of the filing of Attorney Bernard Pelech, dated March 26, 2003. Chairman Field stated that the procedure for a Board considering a Rehearing Request is a non-public participation matter and discussion will be only that of the Board on the 15 points raised by Attorney Pelech. The Board will vote either “For = Yes” or “Against = No” for each item in the order as presented by Attorney Pelech.

Chairman Field confirmed that all Board members had received both a copy of the Request for Rehearing and the “Transcript” which had been commissioned by counsel for Mr. and Mrs. James R. Weldon, and that each had the opportunity to review the “Transcript” in preparation for this Meeting. All affirmed that such was the case.

Mr. Field stated that he had examined each of the fifteen (15) points articulated by Attorney Pelech in seriatim in the context of the Minutes of the Meeting, his notes and the “Transcript”. The “Transcript” was particularly helpful. He indicated that

he would present each issue, make his comments and/or observations and then make a recommendation as to whether or not it met the predicate test(s) from his perspective. Following same, each member of the Board would be invited to offer his observations and reactions, following which a vote will be taken. He observed that the Decision of the Board as Noticed must, in his view, be given a “reasonable interpretation” and, that, if any non-material/non-substantive issue required clarification, that the Board could provide a clarification without the necessity of conducting a Rehearing on all issues.

Item #1

Chairman Field provided his analysis, stating that the Board had granted a Special Exception, subject to conditions, to conduct an “architectural design and general contracting business” office, not a “general contracting business/office”, as suggested in the Request. He stated further that the three (3) photographs were of the same basement space from different visual perspectives. The use of hand or fixed power tools for business/commercial purposes was prohibited; however, no prohibition was placed on the use of such tools for home workshop/personal use. He was of the opinion that Item #1 failed to provide sufficient grounds for the granting of a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was then taken on Item #1.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #1 failed.

Item #2

Chairman Field stated that by electing to come before the Board and requesting a Special Exception for a “home occupation” an Applicant submits to the jurisdiction of the Board and the inherent likelihood that competing interests between “residential” and “business” uses will occur. He stated that the Applicant (through his counsel) agreed to the five (5) vehicle limitation standard imposed by the Board. He was of the opinion that Item #2 failed to provide sufficient grounds for the granting of a Rehearing.

Mr. Luff questioned whether the limit unduly restricted the parking by employees. Mr. Field noted that the Applicant had represented that most work by employees was performed off site and that only occasionally would employees visit at the same time as clients. Further, Applicant had agreed to the five (5) vehicle standard.

A vote was then taken on Item #2.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #2 failed.

Item #3

Chairman Field stated that Item #3 was closely linked and related to Item #2 and for the reasons previously discussed, it was his opinion that it failed to state adequate grounds for granting a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was then taken on Item #3.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #3 failed.

Item #4

Chairman Field noted that Item #4 was related to Items #2 and #3, and reiterated his previous opinions, observations and recommendations.

Members of the Board were invited to comment. Mr. Luff asked whether this item referred to the “Bob-Cat” request. Chairman Field noted that the “Bob-Cat” grounds, so called, would be reviewed in a subsequent Item #.

A vote was then taken on Item #4.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #4 failed.

Item #5

Chairman Field noted that Item #5 may have some claim to validity but should be examined in a broader context of “reasonableness and reasonable interpretation”. He stated further that the Board did not intend to prevent or limit the Applicant from having members of the family and/or social guests from gathering and/or parking non-business related vehicles on the premises for occasional family, social and/or holiday gatherings; provided that such occasions do not result in the creation of conditions which would constitute a general nuisance. He suggested deferring action on Item #5 until all other Items had been addressed, and, then considering whether a clarification of the Board’s intent would be sufficient to address the concerns of Applicant.

Members of the Board were invited to comment. Messrs. Johnson and Turchen both indicated that having social visitors is reasonable, and they hoped that neighbors would be accommodating and understanding of such.

Chairman Field stated that no action would be taken on Item #5 at the present time.

Item #6

Chairman Field observed that, although, according to testimony, the “Bob-Cat” had not yet been used in North Hampton in connection with the Applicant’s “business”, it could be reasonably assumed it could be transported from site to site and stored on premises between jobs. The Applicant had agreed to remove both the “Bob-Cat” and other construction related equipment offsite until “a garage is built” at which time he would return to the Board. It was noted that the Applicant had conceded that the “equipment” was used in connection with the “business” while conducted in South Carolina, and, since the “business” to be conducted in new Hampshire was the same or similar to that conducted in South Carolina, it was reasonable for the Board to limit, or otherwise control, the storage and use of construction equipment within the “neighborhood”, given the neighborhood’s special character.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #6.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #6 failed.

Item #7

Chairman Field noted that the case presented in the Request for the creation of separate driveways had not been presented at the Hearing, but could have been presented; and, as such, it was in his opinion insufficient grounds to grant a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #7.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #7 failed.

Item #8

Chairman Field stated that it was his understanding that Item #8 related to Case #2003:09 and was directly related to the “residence”; and, accordingly was not a legitimate matter to be considered as a Request for Rehearing.

Members of the Board were invited to comment. There were no comments offered

A vote was taken on Item #8.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #8 failed.

Item #9

Chairman Field stated that Item #9 relates to Item #8, and will be considered by the Board on its merits as Case #2003:09.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #9.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #9 failed.

Item #10

Chairman Field noted that the grounds cited in Item #10 had the effect of “bootstraps”, and such grounds could have been introduced by the Applicant at the time of the Hearing. The New Hampshire Supreme Court has indicated that finality of Board decisions are preferred by law. As such, the grounds suggested should not warrant a Rehearing or reconsideration.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #10.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #10 failed.

Item #11

Chairman Field noted that the Applicant was granted the right to conduct a “home occupation” as an “architectural design and general contracting business office”, and meet with clients, vendors and subcontractors. Conditions believed by the Board to be “reasonable” were imposed in the manner believed to be permitted by the Zoning Ordinance and New Hampshire law. Such authorization by the Board provides the Applicant a reasonable use consistent with the character of the neighborhood. Applicant is not prohibited from conducting his business in the manner described. In

the Chairman's view the grounds cited in Item #11 fail to provide grounds to grant a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #11.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #11 failed.

Item #12

Chairman Field stated that the Transcript supports the view that this Board had received and considered testimony and evidence on "sound level/meter" matters as presented by the Applicant. He stated further that considerable evidence and testimony contrary to the Applicant's was introduced, including that of Mr. Weldon's son, who testified that loud and irritating noise was often heard by him and Mr. and Mrs. Weldon. Further, there was evidence that cabinetry and other mill work was taking place on Applicant's premises and that a reasonable inference could be drawn that such work was often "business" related, in that testimony indicated cabinets were moved on and off the premises. It was his view that Item #12 does not provide adequate grounds for a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #12.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #12 failed.

Item #13

As previously stated above, it was the Chairman's view that jurisdiction of the Board, i.e Special Exception request made by the Applicant, necessarily contemplates the imposition of special considerations, and reasonable limitations/restrictions on the conduct of a "home occupation". The Chairman believed that the Board acted with diligence and proper consideration of all the circumstances in arriving at its decision. Accordingly, it was his view that Item #13 fails the test.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #13.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #13 failed.

Item #14

For reasons previously stated concerning the inherent nature of a “home occupation” Special Exception, the Chairman stated that it was his view that Item #14 failed as grounds for a Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #14.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #14 failed.

Item #15

Chairman Field observed that in his opinion Item #15 was merely a restatement of several prior Items and for the reasons previously given should fail as a ground for Rehearing.

Members of the Board were invited to comment. There were no comments offered.

A vote was taken on Item #15.

The Vote to grant a Rehearing was: Yes=0 No=5. Item #15 failed.

Chairman Field then redirected the attention of the Board to Item #5 on which no action had been taken. He confirmed that in his view the limitation of five (5) vehicles was focused and directed at the “home occupation” use and not intended to deprive the Applicant and his family of receiving visitors on special occasions, holidays and for occasional social events.

Chairman Field stated that Item #5 by itself was, in his opinion, insufficient to warrant the granting of a Rehearing; however, clarification of the Board’s Decision could be viewed as a responsible reaction by the Board.

Members of the Board were invited to comment.

Messrs. Johnson, Turchan and Luff each indicated concurrence with the Chairman. A Sense of the Meeting was then proposed.

It was the Sense of the Meeting that:

“Condition (iii) of the “Special Exception” granted by the Board on February 26, 2003, in connection with Case #2003:04 should not be deemed to limit or restrict you, members of your family and/or social guests from gathering and/or parking non-business related vehicles on your premises for occasional family, social and/or holiday gatherings; provided, that such occasions do not result in the creation of conditions constituting a general nuisance. You and your

neighbors are encouraged by the Board to apply reasonable standards of comity and civility on any such occasion.”

The Sense of the Meeting was unanimously endorsed by the Board.

Chairman Field declared that the Board had determined unanimously that none of the fifteen (15) Items set forth in the Request for Rehearing warranted that granting of a Rehearing.

Chairman Field then addressed Attorney Pelech and stated that the Request for Rehearing had been denied. Attorney Pelech asked if a letter would be issued relating to the Sense of the Meeting clarification. Chairman Field stated he would provide a written communication to Attorney Pelech to address his request concerning the Sense of the Meeting.

The Meeting was then declared in recess by the Chairman at 8:00 PM for five (5) minutes.

The Meeting reconvened at 8:05 PM

- B. Case # 2003:09 – Mr. & Mrs. James P. Weldon, 74 Atlantic Avenue, North Hampton, NH 03862 Tax Map #006-005-000** request an Appeal from a Decision of an Administrative Officer (Building Inspector) for the Revocation of Building Permit #ASR-2003-16 issued to Thomas P. McCarthy, 76 Atlantic Avenue to build a 16-foot by 32-foot structure on same location. The property is located at 76 Atlantic Avenue within the R-2 [Medium Density Residential] zoning district .

Chairman Field noted that Mr. Simmons had also recused himself from this Case and that Board Alternate, Mr. Checovich, would remain seated in Mr. Simmons stead.

- (i) Jurisdiction.

Properly before the Board.

- (ii) Case Presentation.

Attorney Christopher L. Boldt of Donahue, Tucker and Ciandella asked the Board to revoke the Building Permit issued to Thomas P. McCarthy for a 32-foot by 16-foot building on his property. He noted that the scope of this proposed building is excessive being half the size of the McCarthy home. Attorney Boldt referred to the Hearing “Transcript” in Case #2003:04 in which Mr. McCarthy stated his intentions to build a garage in which to store the “Bob-Cat,” store materials and operate a workshop.

At this point Chairman Field interrupted and reminded Attorney Boldt that such “Transcript” related to Case #2003:04, and not to Case #2003:09.

Attorney Boldt requested that the Board take the functional equivalent of “Judicial Notice” of the “Transcript”. Chairman Field stated that the Board would assess the information provided in Case #2003:09 with such request in mind.

Attorney Field referenced that an “Accessory Structure” is an incidental use to this non-conforming lot. Attorney Boldt also noted this structure would be an expansion of a “non-conforming use” (Article V, Section 501.2) if it is used for more than what is allowed with the Special Exception on the principal use. He noted that the proposed structure might be located within the 100-foot wetland buffer located on his neighbor’s (Walther’s) property. Attorney Boldt emphasized that the Weldons are concerned with expansion of a business environment in a residential area and requested that the Board protect the neighborhood from this type of expansion. He added that the Building Permit was issued without all the necessary information being provided to the Building Inspector. Attorney Boldt requested that the Board issue a Cease and Desist Order. Chairman Field responded that only the Building Inspector could issue a Cease and Desist Order. Attorney Boldt presented a FEMA [Federal Emergency Management Agency] Map and a Tax Map displaying the “wetland potential”.

(iii) Comments in support: There were none.

(iv) Comments in opposition:

Attorney Pelech, representing Thomas P. McCarthy, commented that there had been a misconception about the use of the “Accessory Structure”. He stated that the structure is to be used as an accessory for residential purposes only (Emphasis supplied). Attorney Pelech indicated that the Applicant is currently renting two (2) storage units for household and personal belongings. He added that this structure is not the “garage” to which reference was made in Case #2003:04, as to which, he conceded, the Applicant would be required to present to the Board for consideration at a future occasion, and is not connected in any manner with his “Home Occupation”. Attorney Pelech noted that the Applicant’s residence is not non-conforming and cited Article IV, Section 406.2 as validation. Further, he added, the proposed Accessory Structure will not be located in a wetland buffer. Attorney Pelech stated that Mr. McCarthy is attempting to address his neighbors’ concerns and asked for reasonableness from the Board. He closed stating that portions of the “Transcript” were misinterpreted. Chairman Field commented to Attorney Pelech that he understood how a misunderstanding could arise from Applicant’s prior comments and the text of the “Transcript” regarding McCarthy’s intention to build a structure to house his construction equipment. He added, that Attorney Pelech had clarified that Mr. McCarthy’s Building Permit was issued for an Accessory Structure for residential purposes, and not for “Home Occupation” uses. Attorney Pelech again, upon inquiry of the Chairman, confirmed that the Accessory Structure

would be limited in use to “residential” uses and purposes.

Richard Mabey, Building Inspector, upon the invitation of the Chairman, confirmed that Mr. McCarthy had presented the plans for the Building Permit indicating that the Accessory Structure was intended for storage of household and personal items and as such was an appropriate use. He commented that the wetland buffer was located approximately 120 feet from the proposed structure and this was an appropriate distance. Mr. Mabey stated that he agreed with Attorney Pelech’s statements.

Floortje Walther, 78 Atlantic Avenue, was sworn in, and stated that she disagreed with Mr. McCarthy’s efforts to accommodate his neighbors and raised the issue of the fence along their shared driveway. Chairman Field noted that the issue she raised is not under consideration by the ZBA at this time.

Peter Walther, 78 Atlantic Avenue, stated that Mr. McCarthy is not behaving like a good neighbor and doubts his true intention as to the use of the Accessory Structure. Chairman Field indicated that the Board could not function as an arbiter of neighborliness.

Attorney Boldt referenced the “Transcript” that states the intended commercial use of the building, and that it is likely that it will not be used just for personal use. He claimed that Mr. McCarthy has made contradictory statements and his request should be disregarded. Mr. Mabey stated that power and hand tools were prohibited for business use, but not for personal use. Chairman Field stated that possible inconsistencies between Case #2003:04, and Case #2003:09 have been identified, but with the recent statements from Attorney Pelech, Attorney Boldt’s references are inferential at best. Attorney Pelech rebuked Attorney Boldt’s comments and stated that he had been consistent and not duplicitous. He closed by stating that Mr. McCarthy wanted to move his personal workshop into the Accessory Structure which would free up space in his basement for more living area.

When Mr. Checovich asked what items are currently stored outside, Mr. McCarthy answered that basic residential overflow items such as lawn furniture, barbecue, lawn maintenance equipment, etc. would be stored in the Accessory Structure, adding that no business related materials would be stored.

Mr. James Weldon, 74 Atlantic Avenue, claimed that the “Bob-Cat” and construction trailer have not been removed. Chairman Field commented that these items might be considered “in limbo” because of the Appeal process from the Decision rendered at the February 26, 2003 Meeting, and the lengthy delay which occurred in generating a “Transcript”.

Mr. Luff asked Mr. McCarthy if the Accessory Structure would have electrical power. Mr. McCarthy answered that it would be wired for electricity. Chairman Field asked when the “Bob-Cat” and trailer would be moved. Attorney Pelech indicated that he had to discuss with Mr. McCarthy whether to Appeal the denial of the Request for Rehearing. If they do not file an Appeal, then those items would be removed by the end of thirty (30) days.

The Chairman then closed the Public Hearing and the Board deliberated on Case #2003:09. Following discussion it was then upon motion duly made by Mr. Johnson, and seconded by Mr. Luff:

Voted: To deny the Appeal to revoke the Building Permit issued by the Building Inspector for an Accessory Structure, noting that the structure is intended solely for storage of personal items unrelated to the “home occupation” Special Exception granted in Case #2003:04, including, but not limited to, the “Bob-Cat” and construction trailer.

The Vote was 4-0 in favor of the Motion. Chairman Field abstained.

- C. **2003:10 – Gregg and Janet Heinlein, 6 Boutilier Lane, North Hampton, NH 03862 Tax Map #013-089-010** request a Variance to Article IV, Section 409.9 for relief from the 50-foot wetland buffer setback to allow for construction of a impermeable (paved) driveway. The property is located at 6 Boutilier Lane within the R-2 [Medium Density Residential] zoning district.

Mr. Luff recused himself and Mr. Simmons was re-seated. Mr. Checovich remained seated in the stead of Mr. Luff. Chairman Field noted that a related case was heard approximately one (1) year ago and that the request to grant a variance for an impermeable wetlands crossing had been denied, but with the caveat that the Board would not bar the Applicant from requesting a future Request for Variance after the many remedial steps required as part of the Wetlands remediation were further advanced. The Decision included an opportunity for the Applicant to re-apply after a year for reconsideration of the variance request.

- (i) Jurisdiction. Properly before the Board.
- (ii) Case Presentation. Attorney R. Timothy Phoenix, Hoefle, Phoenix and Gormley represented the Applicant and introduced Wayne G. Morrill, Engineer/Vice-President, Jones & Beach Engineers, Inc., and Adele Fiorillo, Certified Wetland Scientist, NH Soil Consultants, Inc. who would speak on behalf of the Applicant’s request.

Attorney Phoenix explained that a portion of the Heinlein’s variance request was denied a year ago. As a result of that action, the Heinleins were committed to resolve the outstanding wetland issue. Working with both the engineering firm and the soil consultants, a wetland restoration plan was developed.

Attorney Phoenix explained that the Heinlein's original builder began house construction in the wrong location and was ordered to Cease and Remove the construction. The structure was relocated to its present site and the Heinleins received a variance for a setback infringement for their house. Their request for a variance for a permeable driveway was denied because the proposed driveway traversed a significant area of the wetland buffer.

Attorney Phoenix referred to the Wetland Restoration Plan adding that the current wetland buffer of 100 feet is not applicable because, if applied, the building envelope would be less than 16,000 square feet as set forth in the newly adopted Ordinance. As a result the former 50 feet wetland buffer is applied. He explained that the Wetland Restoration Plan recommended sloping the driveway away from the wetlands into a culvert that would divert water runoff to a grassy area. He added that during heavy rains/storms the runoff would be further diverted to another culvert away from the property.

Adele F. Fiorello, Certified Wetland Scientist, addressed the Board by providing a technical overview. She stated that a paved surface with vegetated swales (as proposed with the Heinlein solution) provides more protection than a gravel surface that erodes and deposits materials and sediments everywhere.

Wayne P. Morrill, Engineer, Jones & Beach Engineers, Inc. explained that the design of the elevated driveway at a southerly pitch with vegetated swale would minimize any runoff and damage to the wetland environment and would be a better solution than a gravel surface.

Attorney Phoenix stated that the Applicants have undergone more than a year-long hardship with their home construction and have made every effort to remedy the situation as much as is possible.

- (iii) Five (5) Conditions. Attorney Phoenix addressed each of 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. Simmons asked why the Heinleins were not granted the driveway variance last year. Chairman Field explained that the Zoning Ordinance prohibited impervious surfaces across wetlands and wetlands buffer zones. The Board had asked the Heinleins to investigate potential options and return in a year for reconsideration. Mr. Simmons added that he feels badly that the Applicant had to wait such a long time for relief. Chairman Field stated that the Board had shared his concerns and had granted a "special right" to Applicant to reapply for the Variance as an accommodation to the Applicant's dilemma.
- (v) Public Comment. None, either in support or opposition; however, the Home Owners Association of the Subdivision had written a letter in support of the

granting of the Variance.

The Chairman then closed the Public Hearing and the Board deliberated on Case #2003:09. Following discussion on motion duly made by Mr. Checovich, and seconded by Mr. Turchan, it was:

Voted: To grant a Variance to Article IV, Section 409.9 for relief from the 50-foot wetland buffer setback to allow for construction of a impermeable (paved) driveway.

The Vote was 4-0. Chairman Field abstained.

Mr. Checovich then retired from the Board and Mr. Luff was re-seated.

VI. Election:

Chairman Field stated that existing circumstances had placed limitations and impediments on his capacity to efficiently and professionally discharge the duties of Chairman, and, that, while he was prepared to continue service on the Board, he would prefer not to serve in the office of Chairman while such conditions persisted. He added that, to enable the Board to consider its future options, he would be willing to serve in a "pro tem" or continuing capacity until the June 18, 2003, Meeting.

After discussion, the other members of Board agreed to Table a vote on slate of "officers" and to continue Messrs. Field and Johnson in the offices of Chairman and Vice Chairman, respectively, on a continuing "pro tem" basis to the June 18, 2003, Meeting of the Board. Following discussion, on motion duly made by Mr. Turchan, and seconded by Mr. Luff, it was:

Voted: To Table elections for officers until the June 18, 2003 meeting of the Board.

The Vote was 4-0. Chairman Field abstained.

VII. Next Meeting.

The next Regular Meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday, June 18, 2003, at 7:00 p.m. in the Town Hall.

VII. Adjournment.

Chairman Field invited a motion to "adjourn."

Upon motion duly made by Mr. Turchan, and seconded by Mr. Johnson, it was:

Voted: To adjourn the Meeting.

The Vote was 5-0.

The Meeting was adjourned at 9:45 PM.

A true record, attest

**NORTH HAMPTON ZONING
BOARD OF ADJUSTMENT**

By: _____
Krystina Deren Arrain
Recording Secretary