



**REGULAR MEETING MINUTES**  
**TOWN OF NORTH HAMPTON**  
**ZONING BOARD OF ADJUSTMENT**  
**July 16, 2003**

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, July 16, 2003 at the North Hampton Town Hall. Notice of the meeting had been properly posted, and noticed in the Portsmouth Herald on July 5, 2003.

### **Attendance**

**Present:** John Anthony Simmons, Chairman; Mark Johnson, Vice-Chairman; Ted Turchan; Richard Luff; and Dick Wollmar seated for Robert B. Field, Jr.(5)

**Absent:** Robert B. Field, Jr.

**Alternate(s) Present:** John Woodworth

**Staff Present:** Richard Mabey, Building Inspector; Krystina Deren Arrain, Planning and Zoning Administrator/Recording Secretary

Mr. Simmons called the meeting to order at 7:06 PM acknowledging the following: "Before we get started, I would like to acknowledge three public servants who are not with us this evening. Dr. Eric Whiting Simmons, Helen Beardsley Simmons and Roland Natale Neves. They all served North Hampton gracefully and made many contributions to our Town. My grandparents served in many capacities in Town over the years, as did Roland, who was instrumental in my involvement at the local level. My only regret about this evening is that they are not here to share it with us."

Mr. Simmons acknowledged the two (2) newly appointed alternates, Ken Worrell and John Woodworth. He indicated that Mr. Worrell was unable to attend the meeting, whereas Mr. Woodworth had taken the oath of office and would be seated at a later time. Mr. Simmons also thanked Mr. Field, the former Chairman, for his service to the Board and the Town. He congratulated Mr. Luff on the birth of his infant daughter.

Mr. Simmons 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.

### **Procedure — Swearing in of Witnesses**

Mr. Simmons explained the standard Rules of Procedure that would be applicable to this meeting to members of the audience. He swore in all persons present who would be giving testimony or presenting comment on matters to be considered by the Board. Mr. Simmons announced that the Recording Secretary would maintain an audio recording of the meeting. Arrangements should be made with the Recording Secretary if an individual is interested in listening to the recording of the

meeting procedures. Minutes of the meeting shall be deemed to be “preliminary” in form and unofficial until the Board votes to approve it. The Application For Relief form has several requirements as part of the application filing process. 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 on a showing of good cause by the applicant.

### **Preliminary Matters/General Correspondence**

Mr. Simmons noted that a recent article in the Hampton Union announced and outlined his view of public service and how he intended to conduct the business of the Zoning Board of Adjustment/ZBA in a user-friendly and respectful manner meeting both the needs of the community and upholding the zoning ordinance.

Mr. Simmons announced that at the Town Hall entrance, a table containing the meeting agenda, literature and other information is available to the public for information purposes.

Mr. Simmons noted that the Board received correspondence from Phillip E. Wilson, Chairman of the Planning Board requesting a joint meeting of the ZBA and Planning Board. He suggested that, since there were a lot of people waiting in the audience and a lot of agenda items to get to, the discussion on Mr. Wilson’s request follow the conclusion of the cases on the agenda for the evening and asked if anyone objected. Without objection, it was special ordered to later in the meeting.

### **Old Business**

**2003:16** – **Alex Perron, 9 Lafayette Terrace, North Hampton, NH 03862** requests a Variance to **Article IV, Section 406** for relief from 50-foot front setbacks and 35-foot side setbacks. Property at 9 Lafayette Terrace, I-B/R zone, Tax Map #021-020-000. This application was tabled from the June 18<sup>th</sup> meeting.

#### **Case Presentation**

Mr. Perron began his presentation explaining to the Board that he wanted to put a garage on his property, replacing a storage shed currently on the property. He stated that because the lot is a non-conforming size, he cannot meet the setbacks and is in dire need of the garaging and storage space the garage would accommodate. Mr. Perron supplied a petition of both abutters and neighbors who supported his desire for constructing a garage on his property.

#### **Findings of Fact (RSA 674:33)**

Mr. Perron addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met. JAS suggestion: these should all go at the end of “Board Observations/Comments” and before the final motion is made.

#### **Public Comment**

None in either support or opposition.

Board Observations/Comments

Messrs. Turchan, Johnson and Luff indicated they had no opposition to Mr. Perron's request.

**Mr. Johnson moved and Mr. Turchan seconded the motion to grant a Variance to Article IV, Section 406 for relief from 50-foot front setbacks and 35-foot side setbacks.**

*The vote was 4-0. Mr. Simmons abstained.*

**New Business**

**2003:19 – Gary Densen, 56 Westville Road #4, Plaistow, NH 03865** requests a Variance to Article IV, Section 406.4 (a) for relief from the 60,000 sq. ft. non-wetland area requirement to build a duplex. Property location: 2 Hobbs Road, I-B/R zone district, Tax Map #013-007-000.

Case Presentation

Mr. Densen opened his presentation by thanking both Mr. Mabey and Ms. Arrain for their assistance in his application preparation. He indicated that the property at 2 Hobbs Road is zoned I-B/R which means it could be used for either commercial or residential use, but his application requested a residential use for the property. Although his plan met all the setback requirements, the area lot coverage for a duplex was not met, whereas, the area lot coverage was adequate for a single-family home. Mr. Densen felt that applying the property to residential use with a duplex constructed on site was a better application for the Hobbs Road neighborhood than using it for commercial use.

Findings of Fact (RSA 674:33)

Mr. Densen addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met.

Public Comment

None in either support or opposition.

Board Observations/Comments

Mr. Johnson commented that the lot had less than one (1) acre of contiguous upland that is required under Section 411. Mr. Wollmar asked the applicant who delineated the wetlands on the property. Mr. Densen responded that NH Soil Consultants delineated the wetlands. Mr. Mabey, the Building Inspector stated that the applicant's plan provided verification of the setbacks and wetlands. When Mr. Wollmar asked the applicant who owned the property, Mr. Densen stated it was Mrs. Shirley Craven of Hampton, NH. Mr. Mabey stated that he applied Section 406.4(a) of the ordinance to this application because it is stricter than Section 411 that requires 43,560 square feet of upland whereas Section 406.4(a) required 60,000 square feet of upland. Mr. Wollmar asked for verification of Section 409.9, the newly updated wetland buffer ordinance, which Mr. Mabey provided. Mr. Simmons commented that the Board had not processed many duplex cases and was perhaps uncertain of the appropriate ordinance requirement to apply to this request. He further added that the Simplex case had made the five (5) criteria less restrictive.

**Mr. Turchan moved and Mr. Luff seconded the motion to approve the Variance to Article IV,**

**Section 406.4 (a)** for relief from the 60,000 sq. ft. non-wetland area requirement to build a duplex on 37,026 square feet of area lot coverage.

*The vote was 4-0. Mr. Simmons abstained.*

**2003:20** – Richard Gabrielson, 148 South Road, North Hampton, NH 03862 requests a Variance to Article IV, Section 409.9 B. for relief from 100-foot wetland buffer to install a pool. Property location: 148 South Road, R-3 zone district, Tax Map #009-001-009.

Case Presentation

Mr. Gabrielson opened his presentation by thanking both Mr. Mabey and Ms. Arrain for their assistance in his application preparation. He then exhibited a foam board display with numerous photographs of his lot and home. Mr. Gabrielson explained that when Section 409.9 was updated in March 2003, the wetland buffer on his property went from 50 feet to 100 ft. It was in this area in the rear of his home that he originally anticipated locating his pool. Mr. Gabrielson commented that there is sufficient space for the pool alongside his home, but that would entail cutting down a large stand of trees that separate his house from his neighbor. He and his wife feel strongly that the ideal location for the pool is directly behind the house. The Gabrielsons have young children and they believe their children's safety would be at risk if the pool were located anywhere other than behind their house.

Findings of Fact (RSA 674:33)

Mr. Gabrielson addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met.

Public Comment

Ms. Christine LaRiviere, 151 South Road, North Hampton, an abutter, indicated support for the Gabrielson's application. There were no comments in opposition.

Board Observations/Comments

Mr. Simmons commented on the completeness of Mr. Gabrielson's five (5) criteria. Mr. Turchan asked for details of the filter location and if the backwash would be directed away from the wetland. Mr. Gabrielson did not have the answer, but indicated he would discuss Mr. Turchan's issue with the pool builder. Mr. Wollmar asked for the pool dimensions that Mr. Gabrielson indicated are 40 feet by 21 feet in a kidney-shape style.

**Mr. Johnson moved and Mr. Wollmar seconded the motion to approve a Variance to Article IV, Section 409.9 B. for relief from 100-foot wetland buffer to install a pool.**

**Special Conditions.** The pool's water filter waste discharge is to be directed as far away as possible from the wetland area.

*The vote was 4-0. Mr. Simmons abstained.*

**2003:21** – Frank and Sandra Margolis, 125 Atlantic Avenue, North Hampton, NH 03862 requests a Variance to Article IV, Section 409.9 B. for relief from 100-foot wetland buffer to build an impermeable, paved driveway. Property location: 125 Atlantic Avenue, R-2 zone district, Tax

Map #006-082-000.

Case Presentation

Mr. and Mrs. Margolis provided photos of their property, detailing the length and condition of their current 180-foot driveway comprised of a small cobblestone section and the remaining length of crushed stone. They want to pave the driveway and put a culvert under a section that traditionally forms temporary pools after heavy rains. The Margolises commented that an abutter has a longer driveway that is paved and is very near Little River. They further added that most of their neighbors have paved driveways.

Findings of Fact (RSA 674:33)

Mr. & Mrs. Margolis addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met.

Public Comment

None in either support or opposition.

Board Observations/Comments

Mr. Wollmar asked if the Margolises investigated alternative materials. Mr. Wollmar commented that he used stone dust for a driveway material, adding that it required occasional re-leveling/re-smoothing maintenance. The Margolises responded that their contractor, Andrew Lang, indicated to them that stone dust required more maintenance and created more disturbance to wetlands. They added that their intent is to place a culvert in the area where most water collects. The Building Inspector commented, that in his opinion, compacted gravel is impervious. He felt paved driveways are less disruptive to the wetlands because they can be designed to minimize soil erosion. Mr. Turchan agreed with the Building Inspector adding that snow plowing distributes crushed stones into the wetland. Mr. Turchan suggested that, instead of a culvert, the driveway should be pitched at a slight angle to re-distribute water runoff.

**Mr. Turchan moved and Mr. Luff seconded the motion to approve a Variance to Article IV, Section 409.9 B. for relief from the 100-foot wetland buffer to build an impermeable, paved driveway.**

**Special Conditions.** The applicants, should they decide to install a culvert to facilitate water runoff, are required to have the installation of a culvert properly engineered and reviewed by the Building Inspector prior to construction.

***The vote was 3-2. Messrs. Johnson and Wollmar were opposed.***

**2003:22 – Glenn & Joanne Wilusz, 10 Squier Drive, North Hampton, NH 03862** requests a Variance to Article IV, Section 409.9 B. for relief from 100-foot wetland buffer to install an in-ground pool. Property location: 10 Squier Drive, R-2 zone district, Tax Map #012-030-005.

Case Presentation

Atty. Christopher Boldt, Donahue, Tucker & Ciandella, Exeter, NH, representing the applicant, began his presentation by exhibiting a foam board display of the applicant's lot plan. He noted that the lot covers 3.18 acres but the house is located on the eastern end of the property and the greater

portion is located to the west of the house. Atty. Boldt explained that when the setbacks and septic area is applied the amount of area available for the location of a pool is limited. He provided two possible options for the location of the pool that he labeled "Exhibit A" and "Exhibit B."

#### Findings of Fact (RSA 674:33)

Atty. Boldt addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met.

#### Public Comment

None in either support or opposition.

#### Board Observations/Comments

Mr. Wollmar asked if the pool would be filled with well water. Atty. Boldt responded that the applicant would probably purchase a tanker of water for the fill-up. Mr. Wollmar asked if the applicant would consider substituting a peroxide system that is less environmentally damaging than a chlorine system. Atty. Boldt responded that the applicant would consider such an alternative. Mr. Johnson asked if the pool location in "Exhibit B" could be more angled away from the buffer area. Atty. Boldt responded that such a re-location would involve the necessity to cut into an embankment. In addition, the applicant intended to fence in the pool area for safety reasons. Mr. Johnson commented that he felt the "Exhibit B" option as the better choice for the pool location. He suggested that pool house should be moved closer to the diving board end of the pool. Mr. Luff commented that he felt "Exhibit B" was the better choice, as well.

**Mr. Johnson moved and Mr. Luff seconded the motion to approve a Variance to Article IV, Section 409.9 B. for relief from the 100-foot wetland buffer to install an in-ground pool.**

**Special Conditions.** The pool is to be located in one of two locations as specified on the "Exhibit B" plan submitted by the applicant as amended by the Board.

***The vote was 4-0. Mr. Simmons abstained. Members initialed the approved plan location.***

The meeting recessed at 9:00 PM

The meeting reconvened at 9:05 PM

**2003:23 – Servicestar Development, 5760 Greenwood Plaza Blvd, Ste 300, Greenwood Village, CO 80111** requests a Special Exception to Article IV, Section 405 to operate a gasoline or service station — for Shell convenience store and gas station, and Great American Tire and Auto Service. Property location: NW Corner Lafayette Road and Atlantic Avenue, I-B/R zone district, Tax Map #007-124-000, #013-001-000 and #014-170-002.

Mr. J. A. Simmons recused himself for this case.

Mr. Johnson assumed the Chair.

Mr. Woodworth was seated for Mr. J. A. Simmons

#### Case Presentation

Peter Simmons, 29 Ocean Boulevard, representing the applicant and Peter E. Simmons, property owner, began his presentation explaining that he is requesting a Special Exception for the posted or

any other facilities on the subject parcels. He further noted that although a conceptual plan had been submitted with the application, the focus of the application was the granting of a Special Exception. Mr. Johnson noted that Section 405 in the I-B/R District under the Special Exception column lists Item #9 as Gasoline or Service Stations. Hence, it is appropriate for the ZBA to hear the applicant's case. Mr. Johnson read into the record, Section 512.

Section 512 --Gasoline and Service Stations

*Gasoline stations and service stations shall be nonconforming uses in all Districts upon adoption of this ordinance.*

*512.1 -- The number of gasoline stations and service stations permitted in the Town of North Hampton shall be limited to the number of gasoline stations and service stations in existence and operating at the time of the adoption of this ordinance.*

*512.2 -- If the number of gasoline stations and service stations becomes less than the total number in existence and operating at the time of the adoption of this ordinance, a person may apply to the Zoning Board of Adjustment for a permit to construct and/or operate a gasoline station or service station in the I-B Industrial Zone only. The Zoning Board of Adjustment shall not issue a permit except for good cause shown. \*3/6/73*

Mr. Johnson asked Mr. Simmons to demonstrate "good cause" for the granting of a "Special Exception." Mr. Simmons responded that in the 30 years since the enactment of that ordinance, the town has grown and so had the need for gas stations to meet the community's need. Since the property is located in the I-B/R, it is the appropriate location for such a service business.

Mr. Johnson noted that since the ordinance limits the number of gas stations in existence in 1973, he asked Mr. Simmons for historical reference on how his request would not exceed the 1973 limitation. Mr. Simmons responded that according to his research, there were ten (10) gas stations and there are currently five (5).

Mr. Simmons listed the following as existing gas stations in 1973:

- |                            |  |
|----------------------------|--|
| 1. Ken's Garage            | 70 Lafayette Road  |
| 2. Amoco Gas Station       | 74 Lafayette Road  |
| 3. Shell Gas Station       | 73 Lafayette Road [now currently Irving Gas]                 |
| 4. Bunny's Mobil           | Ocean Boulevard  |
| 5. Post Road Grocery       | Post Road  |
| 6. Tut's Jenny Oil Service | Elm Road/Route 1   |
| 7. Robinson Oil            | Lafayette Road [current location of BMW Motorcycles]         |
| 8. Simac Oil               | 115 Lafayette Road [at current location of Callahan Motors]  |
| 9. Mel's Truck & Fuel      | 8 Lafayette Road [current location of First Student Bus Svc] |
| 10. Hampton Air Field      | Lafayette Road/Route 1                                       |

Existing Gas Stations in 2003

- |                          |                        |
|--------------------------|------------------------|
| 1. Ken's Garage/Mobil    | 70 Lafayette Road      |
| 2. Irving Gas Station    | 73 Lafayette Road      |
| 3. Gulf Station          | Elm Road/Route 1       |
| 4. North Hampton Grocery | 180 Lafayette Road     |
| 5. Hampton Airfield      | Lafayette Road/Route 1 |

Mr. Woodworth asked Mr. Simmons how he developed the list. Mr. Simmons responded that he

talked with long time residents and from his own memory since he has lived in the area since 1946. Mr. Simmons noted that Mrs. Ellingwood and Michael Iafolla were in the audience and supported his research as did Mr. Robinson, who could not attend this evening.

#### Public Comment

None in support

In opposition --Michael Saal, 7 Hampshire Road, North Hampton, questioned why the town needed another gas station. He stated that he lives behind the Irving Gas Station and there is already a lot of traffic and another similar facility would increase the traffic problem. He added that since there are a lot of children in the area, he was concerned about the safety issue.

Mr. Johnson asked Mr. Simmons if he had any comment in response to Mr. Saal's comment. Mr. Simmons added that any issue of traffic congestion or safety is a Planning Board issue and not germane to the ZBA.

#### Board Observations/Comments

Mr. Wollmar stated he was unsure about the good cause issue, asking the applicant to elaborate. Mr. Simmons re-affirmed that the property is located in the appropriate business area and there is a demand for this service in the town. He had owned the property since 1970 and it is appropriate for it to be developed. Mr. Simmons stated that his definition of good cause means service to the public and the gas station would service the public.

Mr. Turchan commented that the Board should establish the number of gas stations that existed in 1973 and those that exist in 2003. Once these numbers are established, it would provide a basis for which to grant a Special Exception. The Board agreed that establishing the 1973 and 2003 number of gas stations would be the appropriate action for the Board to take to clarify this issue. Mr. Johnson and the Board reviewed the list as presented by Mr. Simmons, opening the discussion up to the public for input and for comment.

Ron Todd, 6 Woodridge Lane, North Hampton, asked if the criteria are that these businesses existed or that they sold gasoline. Mr. Johnson stated that the criteria are that they sold gasoline to the public. Michael Iafolla, 100 Woodland, North Hampton, asked to make the distinction between gas stations and service stations. He said that the original ordinance dealt with gas stations. He asked that the Board make the distinction that it is establishing the number of gas stations as of 1973 and 2003. He asked that the minutes reflect that the discussion detailed gas stations only, that the number of service stations was not discussed or considered. He suggested that the issue of setting the number of service stations be considered at another time.

**Mr. Wollmar moved and Mr. Turchan seconded the motion to establish that ten (10) gas stations existed in 1973 and that five (5) gas stations currently are operating in North Hampton in 2003.**

***The vote was 4-0. Mr. Johnson abstained.***

Mr. Johnson made a statement regarding the issue of good cause shown. He suggested that the town should perhaps consider limiting the number of gas pumps at current and future locations. He also commented that he is concerned about the concentration and expansion of large corporations as



exclusive suppliers and away from the local, private ownership. He was concerned that this scenario is not necessarily a good trend for either the town or our country.

**Mr. Turchan moved and Mr. Luff seconded the motion that after establishing the validity, to the best of their ability, the number of gas stations in both 1973 and then in 2003, and establishing good cause, to grant the Special Exception to operate a gas station on the subject parcels referencing Case #2003:23.**

*The vote was 4-0. Mr. Johnson abstained.*

Mr. Simmons requested that decision letters be sent to all three (3) owners of the property.

Mr. J. A. Simmons was reseated

Mr. Woodward retired his seat.

**2003:24** – **Patricia Leyman, 3 Golden Brook Road, Windham, NH 03087** requests a Variance to **Article IV, Section 409.9 B.** for relief from 100-foot wetland buffer to install a swimming pool, patio and retaining wall. Property location: 17 Squier Drive, R-2 zone district, Tax Map #012-030-015.

Case Presentation

Atty. Denise Poulos, Donahue, Tucker & Ciandella, Portsmouth, NH representing the applicant explained that Mrs. Leyman purchased the property in 2001 with the intention of building her primary residence. Construction began in Fall 2002 but the building permit did not show a pool that was the intent all along. The house was designed with the pool in mind. The land was disturbed/prepared for the pool from the beginning of the building process. During all of this time, the wetland buffer ordinance had changed and the applicant was now required to apply for a variance to allow the pool to be constructed. Atty. Poulos submitted a letter from an abutter, Elizabeth Hardin, 15 Squier Drive, which Mr. Simmons read into the record. The statement from Ms. Hardin follows: "I have no objection whatsoever to the construction of a pool and patio as indicated under the proposed plan." Atty. Poulos noted that Mrs. Leyman had just moved into her home last week.

Findings of Fact (RSA 674:33)

Atty. Poulos addressed the five (5) conditions, which must be satisfied to allow the granting of a variance. The Board concluded that the five (5) conditions were met.

Public Comment

None in either support or opposition.

Board Observations/Comments

Mr. Johnson commented that the pool was part of the original plan and it seems the most logical location and sees no reason to re-locate the pool. Mr. Turchan commented that the applicant, since she was not a resident at the time of the ordinance change, was caught in the transition.

**Mr. Johnson moved and Mr. Luff seconded the motion to approve a Variance to Article IV, Section 409.9 B. for relief from the 100-foot wetland buffer to install an in-ground pool, patio**

and retaining wall.

**Special Conditions.** The pool's water filter waste discharge is to be directed as far away as possible from the wetland area.

*The vote was 4-0. Mr. Simmons abstained.*

## Minutes from Prior Meeting

Minutes of the June 18, 2003 Meeting

**Line 83-90: Mr. Simmons moved and Mr. Turchan seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 97: Mr. Simmons moved and Mr. Wollmar seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 109: Mr. Simmons moved and Mr. Turchan seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 176: Mr. Simmons moved and Mr. Wollmar seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 226: Mr. Simmons moved and Mr. Turchan seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 339: Mr. Simmons moved and Mr. Johnson seconded the motion to change to "Johnson moved."**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 343-344: Mr. Simmons moved and Mr. Johnson seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

**Line 389-400: Mr. Simmons moved and Mr. Turchan seconded the motion to accept the minutes as amended.**

*The vote was 4-0 with Mr. Luff abstaining.*

Mr. Wollmar retired from the Board at 10:15 PM.

Mr. Woodworth was seated for Mr. Field at 10:15 PM.

Mr. Simmons recused himself from the upcoming discussion.

Mr. Johnson assumed the Chair.

**Discussion on Planning Board Chairman's Request for Joint ZBA/Planning Board Meeting.**

Mr. Johnson read into the record the e-mail/letter received from Phillip E. Wilson, Chairman of the Planning Board. Mr. Johnson stated this request was the basis for the upcoming discussion:

*Dear Mr. Johnson,*

*At the 1 July meeting of the Planning Board, the Board voted to request a joint meeting of the Planning Board and the ZBA to discuss provisions of Section 512 of the Zoning Ordinance.*

*The question arose as a result of Planning Board case #03-27, an application to add a lube center to an existing car-wash business at 22 Lafayette Road. The ZBA has heard an application for a variance related to this site, and the notice for the ZBA meeting for 16 July includes another application for a Special Exception that raises similar questions with respect to provisions of Section 512.*

*Mr. John Anthony Simmons, Chair of the ZBA, has stated that he is recusing himself from both the process of arranging a joint meeting of the ZBA and Planning Boards and from deliberations about the questions posed.*

*Hence, I am writing to you as Vice Chair to request that you take steps to arrange a joint meeting of the two Boards as soon as possible.*

*I proposed to Mr. Simmons that the joint meeting be held prior to the Planning Board's regular work session meeting on 21 July. Meeting on that date would not only be convenient for the Planning Board, but would also provide both Boards an opportunity to come to a shared understanding of Section 512 -- or how to reach such an understanding -- before the Planning Board must consider either application noted above, or other similar applications, should any be submitted.*

*As I wrote to Mr. Simmons on 3 July:*

*"At least two issues with respect to Section 512 of the Ordinance are relevant to a case recently heard by the ZBA and likely soon to be heard by the Planning Board. These two issues are:*

- 1. Operative definitions of 'gasoline station' and 'service station' and*
- 2. The 'number of gasoline stations and service stations in existence and operating at the time of the adoption' of the Ordinance, which is the limiting number of such facilities permitted in the town."*

*In fulfilling its responsibility, the Planning Board must first consider whether an application is complete, and no application is complete that requires a variance from the ZBA. Section 512 limits the number of service stations and gasoline stations that can operate in North Hampton. The Zoning Ordinance does not provide for deviation from that limit on the*

*number imposed by Section 512.1, and Section 512.2 says the ZBA "shall not issue a permit [for a gasoline or service station that brings the number up to the limit] except for good cause shown."*

*Under these circumstances it is apparent that the issues noted above are both important to the Planning Board, as well as the ZBA, and "time sensitive" in view of cases before the Boards now or expected in the immediate future.*

*Please let me know as soon as possible whether you will arrange the requested meeting on 21 July. If not, please let me know alternatives you propose.*

*Cordially,*

*Phillip E. Wilson, Chair  
North Hampton Planning Board*

Mr. Johnson opened the issue to discussion asking for opinions. Mr. Turchan commented that Section 512 is completely within the jurisdiction of the ZBA. Mr. Johnson agreed that the ZBA is the interpreter of the zoning ordinance. Mr. Turchan stated he may want to determine the definition of a service station, commenting that every individual would probably have a possibly, different definition, but his definition would be a service station is a gas station.

Mr. Todd commented that the Planning Board has and will be hearing other cases on Section 512 and felt a joint meeting would accomplish the goal of establishing the number that was alluded to but not determined in the 1973 ordinance.

Mr. Iafolla stated the interpretation of the zoning ordinance is 100% jurisdiction of the ZBA. He does not believe a joint meeting is necessary. Mr. Johnson agreed with Mr. Iafolla's statement. Mr. Peter Simmons commented that he thought the Planning Board was overstepping its bounds. He further stated that the ZBA determines issues on a case-by-case basis. Mr. Simmons commented that the Planning Board is not the ZBA and mixing the boards together is unnecessary. He added that if a joint meeting is held it should be on a Planning Board issue not a ZBA issue. Mr. Simmons noted that if the Planning Board does not agree with a ZBA issue, there is an appropriate appeal process available to them.

Mr. Todd commented that the request for a joint meeting is an effort of working as a team. The Planning Board is not trying to usurp the ZBA's authority; they are simply requesting information regarding an upcoming Section 512 issue. Mr. Turchan asked, "Did the Planning Board not approve of the 22 Lafayette Road case? Why was the ZBA's decision on this case questioned?"

Mr. Todd answered that when the 22 Lafayette Road case was heard by the ZBA, no evaluation of or questioning of Section 512 was raised. He stated that the whole issue of Section 512 was ignored. Mr. Luff asked Mr. Todd what the Planning Board wanted. Mr. Todd responded that they want to know the number of service stations in town as of the Section 512 ordinance dated 1973. Mr. Todd added that the definition of service stations must be established.

Mr. Iafolla questioned why does the ZBA need help interpreting the zoning ordinance. Mr. Peter

Simmons stated there is a separation of power between the Planning Board and ZBA and each board's responsibility is clearly defined. He further added that the Planning Board does not interpret the ordinance, it implements the ordinance.

Mr. Todd referenced RSA 676:2 as a basis/justification for holding joint meetings. Mr. Luff proceeded to read RSA 676:2 into the record:

*676:2. Joint Meetings and Hearings.*

*I. An applicant seeking a local permit may petition 2 or more land use boards to hold a joint meeting or hearing when the subject matter of the requested permit is within the responsibilities of those land use boards. Each board shall adopt rules of procedure relative to joint meetings and hearings, and each board shall have the authority on its own initiative to request a joint meeting. Each land use board shall have the discretion as to whether or not to hold a joint meeting with any other land use board. The planning board chair shall chair joint meetings unless the planning board is not involved with the subject matter of the requested permit. In that situation, the appropriate agencies which are involved shall determine which board shall be in charge.*

*II. Procedures for joint meetings or hearings relating to testimony, notice of hearings, and filing of decisions shall be consistent with the procedures established by this chapter for individual boards.*

*III. Every local land use board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.*

Mr. Luff stated that it appears that a joint meeting must be triggered/initiated by an applicant. He questioned that the Planning Board, not an applicant case was the basis for the request. Mr. Turchan commented that the question of the number of gas stations has been settled by the Board's action earlier in the meeting. He added that the ZBA should determine the number of service stations, as well. Mr. Iafolla commented it would be difficult to identify all service stations at this time. Mr. Turchan noted that service stations require a state repair license. Mr. Woodworth commented that it is a good practice to keep the boards separate. He thought it was a bad idea to combine the boards. Mr. Woodworth stated that it is better for the two boards to act and be separate, but equal. Mr. Peter Simmons commented that he has performed research on the number of service stations and will be pleased to share this information with the ZBA.

**Mr. Turchan moved a motion to meet with the Planning Board at some convenient time for both boards.**

**The motion was not seconded. Mr. Johnson stated that the motion had failed and the matter was closed.**

Mr. Johnson retired the Chair at 11:05 PM

Mr. Simmons resumed the Chair at 11:05 PM

**Discussion on Updating (1) Rules of Procedure and (2) ZBA Forms**

Mr. Simmons resumed the Chair.

Because of the lateness of the hour, Mr. Simmons suggested that the Board call a work session to

discuss the Draft Proposed Rules of Procedure and Forms, and other matters he intended to share with the Board regarding ways to operate more efficiently and effectively.

**Mr. Simmons moved and Mr. Johnson seconded the motion to organize a work session within 30 days.**

*The vote was 4-0 with Mr. Simmons abstaining.*

**Next meeting**

The next meeting of the North Hampton Zoning Board of Adjustment will be held on Wednesday, August 20, 2003, at 7:00 p.m. in the Town Hall.

**Adjournment**

**Mr. Turchan moved and Mr. Luff seconded the motion to adjourn.**

**The vote was unanimous (5-0).**

Meeting adjourned at 11:15 PM

Respectfully submitted,

Krystina Deren Arrain  
Recording Secretary