



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
November 19, 2003

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Thursday, November 19, 2003 at the Roberta T. Craig Room, North Hampton Public Library. Notice of the meeting had been properly posted at the Library, Post Office and Old Town Offices/Town Clerk on November 4, 2003 and published in the Hampton Union on Tuesday, November 4, 2003.

Attendance

Present: (1) John Anthony Simmons, Chairman; (2) Mark Johnson, Vice-Chairman; (3) Richard Luff; (4) Robert B. Field, Jr., (5) Ted Turchan

Alternate(s) Present: Ken Worrell

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

Mr. Simmons called the meeting to order at 7:05 PM

Mr. Simmons declared a quorum and introduced Board members. Mr. Simmons proceeded to the business of the meeting. He 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.

Minutes from Prior Meetings

Mr. Simmons noted that minutes are normally reviewed after the hearing of case/s, but because Case #2003:26 referred to actions included in the October 16, 2003 meeting, the minutes of that and the September 17th meeting will be reviewed at the beginning of the meeting.

Review of September 17, 2003 Minutes

Field moved and Mr. Luff seconded to approve Sept 17th minutes as amended.

Mr. Field noted that some of his comments were omitted on draft minutes that referred to the request for rehearing from the Planning Board. He requested that his comments (i. to viii.) listed in his letter of October 17, 2003 to Mr. Simmons are incorporated into the minutes.

Vote was unanimous (5-0).

Review of October 16, 2003 Minutes

Mr. Field moved and Mr. Simmons seconded the motion to accept the minutes as amended.

Vote was 3-0-2 with Messrs. Simmons and Turchan abstaining.

Old Business

2003:26 —Rehearing; Craig N. Salomon, 8 Richard Street, Hampton, NH 03842 —Rehearing for the September 3, 2003 denial of a Special Exception to Article V, Section 507 to permit a law office as a home occupation. Property location: 100 Woodland Road, R-2 zone district, Tax Map #006-099-000.

Mr. Simmons recused himself from Case #2003:26.

Mr. Worrell was seated for Mr. Simmons.

Mr. Johnson assumed the Chair.

Mr. Johnson explained to the audience that at the October 15, 2003 meeting, the applicant requested a rehearing of his case that had been denied at the September 3, 2003 meeting. The Board granted the applicant's request for rehearing in October and the Board was posed to re-hear the case at this time.

Atty. Salomon, the applicant, explained that he had purchased the property and is currently in residence. He explained that he wanted to move his practice into his new residence. Atty. Salomon noted that the southern portico is to be enclosed and the former owners' home office would be converted into his home occupation. He expressed his commitment to becoming a good neighbor. His rehearing request wanted to address errors in law and to clarify the voiced concerns of neighbors. He presented a letter stating that he has made arrangements with The Hamptons Real Estate to use their conference room for the purpose of large closings. Atty. Salomon re-emphasized that a Special Exception is a permitted use. The discretion of the Board is limited as long as the criteria were met. Atty. Salomon noted that since the voters have determined that a Home

Occupation is a permitted use as a Special Exception in the R-2 zone, the discretion of the Board is limited. Atty. Salomon further added that consideration of neighbors' concerns as criteria for denial results in "spot" zoning.

Atty. Salomon addressed the five (5) criteria of Section 507 noting that the only difference in the appearance of the structure is the closing in of portico at southern driveway entrance. He presented information that is not legally relevant but wanted to be clear and to present and address previously voiced concern.

Mr. Johnson opened the floor to comments in support of the application. None were received. Mr. Johnson opened the floor to comments in opposition to the application.

Michael Iafolla, 114 Woodland Road, commented that he was speaking for himself as well as Ralph White, Susan Smith and Jake Cahill who were strongly opposed. Mr. Iafolla commented that he had driven over R-2 zone and had not found any home occupations. He noted that he knew of a therapist on Atlantic Avenue but she did not have a sign noting her location. He referenced the letter from Mr. Follansbee about the diminution of property value. He noted that frequently new developments prohibit home occupations because it devalues property. Mr. Iafolla talked about the home values/assessment issue. He firmly stated that a commercial endeavor has no place in a purely residential area.

Mr. Field asked if the 3 visit a day for 11 occasions a year is excessive. Mr. Iafolla stated that past performance is not an indication of future action. Mr. Field said that excessive use could be enforced. Mr. Iafolla doubted it could be enforced.

Diann Kinsler, 131 Woodland Road, commented she is very concerned about the sign; that it will detract from the appearance of the neighborhood. She noted that one special exception leads to another and continues to proliferate. She reiterated her opposition to the home occupation sign further adding that it will lower peoples' property value.

Marie Kraft, 103 Woodland Road, submitted 4 letters from neighbors who are opposed to the Special Exception. They are (1) John & Nina Bottomley, 4 Cotton Farm Lane, (2) Marla Katz, 11 Cotton Farm Lane, (3) Pattie Laroche, 5 Cotton Farm Lane, and (4) Michael & Joanne Coutu. Ms. Kraft commented that she is not that familiar with the law, but she wanted to address neighborhood issues. She emphasized she would not buy her property again and asked the audience if they purchase their home if a business were operating in the neighborhood. Atty. Salomon voiced an objection that questions have to go through the Chair. The question went unanswered. Ms. Kraft commented that she is concerned that the Special Exception will become the norm that would result in the neighborhood changing from the purely residential area that is the situation currently. She stated it as a "disease that will spread." Mr. Johnson explained to Ms. Kraft what constitutes a Special Exception. She asked how changes to zoning ordinance are accomplished. Mr. Johnson explained that the Planning Board initiates zoning changes and voted on by the townspeople.

Bob Durant, 26 Deer Run Road, asked about what hardship had the applicant sustained? Mr. Johnson explained the difference between variance and Special Exception. The Special Exception does not require a hardship test.

John Anthony Simmons, as a private citizen, commented that he hoped the sentiments voiced this would be considered and addressed by the Planning Board. He noted that the ZBA has received numerous applications for Special Exceptions and this is an issue that should be addressed. He suggested that the ZBA should communicate this issue to the Planning Board.

Mr. Johnson referenced that the three Exeter Road Special Exceptions were “fixes” from notices of violation. Ron Todd, 6 Woodridge Lane, suggested that perhaps citizens should institute a citizens’ petition. He added that the Planning Board is working on addressing some similar issues but there is probably not time enough to make sufficient changes in time for the March town vote.

Atty. Salomon commented primarily on issues that were raised stating that he purchased the property because the Special Exception permitted a home occupation.

Atty Bernard Pelech, Portsmouth, noted that North Hampton has a very liberal home occupation ordinance and said other communities have stringent requirements. He felt the Board had no other choice than to approve the Special Exception.

Ms. Kinsler noted that she perceived a home occupation as one of the arts or crafts, not “lawyering.” Mr. Iafolla asked if the citizens cannot come to this Board, then where can they go. Mr. Johnson said this is the place to be heard, but perhaps a citizens’ petition is the best option. Mr. Field said there are two sides to every issue and Mr. Salomon has the right on his side.

Ms. Kraft said letters could be written from the Boulders’ property owners that state their property is impacted. She further added that while Atty. Salomon exercised his rights, her rights had been compromised.

Mr. Turchan noted that the word “mandatory” in Section 507 was used and Section 601 uses the word “may.” Mr. Field said if the five tests in 507 are met then the “mandatory” granting can be secured.

Mr. Turchan expressed concern about the neighbors’ comments being unheeded. Mr. Field commented that he understood the concerns of the neighbors but felt the law was clear. Mr. Worrell agreed with Mr. Simmons comments but felt the applicant had met the criteria. Mr. Luff agreed with Mr. Field.

**Mr. Field moved to approve and Mr. Luff seconded the motion to approve.
Vote was 3-1-1 with Mr. Turchan opposed and Mr. Johnson abstaining.**

Mr. Worrell retired from the Board and left the meeting.

Mr. Simmons resumed the Chair.

Meeting recessed at 8:31 PM

Meeting reconvened at 8:40 PM

Other Business

2003:31 —**Frank and Karen McWilliam, 229 Post Road, North Hampton, NH 03862** —requests an Appeal of Planning Board Decision by referencing NH RSA 676:5 III. Property location: 229 Post Road, R-3 zone district, Tax Map #022-014-002.

Mr. Field noted that the Notice of Decision said a 30-Day Appeal is noted. Other than the reference in Section 704, Mr. Simmons asked if the Planning Board Rules of Procedure state a 30-day appeal deadline. Mr. Todd said he believes any reference on decision letters refer to the Board of Adjustment.

Board members questioned whether the Board had the jurisdiction to hear the appeal, specifically referring to its timeliness, as “what is a reasonable time.” Mr. Simmons noted that the ZBA would address the issue of appeal time later in the meeting. Mr. Todd commented that perhaps the Planning Board should agree on the same amount of time in their Rules of Procedure.

Dana Alan Lily, Concrete Builders, representing the McWilliams, noted that he asked for an interpretation of the new wetland ordinance [which had not been tested] following the decision through the administrative official. Mr. Lily stated that he did not get the interpretation and then the McWilliams decided to file an application with the ZBA. As a result, the appeal to the ZBA was filed much later than would be normally expected.

Mr. Field moved and Mr. Simmons seconded the motion that the filing of the application was timely.

Vote was unanimous (5-0).

Mr. Todd, Vice-Chairman of the Planning Board, agreed with Board’s motion and requested a copy of the letter to correct any future problems of a similar nature.

The application was accepted as timely. Mr. Lily referenced the June 9th letter in which he stated:

“During our discussion, it was pointed out to you that since the new 100’ set-back requirements were not met, the old 50’ provisions would apply. Since the new 100’ requirements imposed by the new ordinance would require a building envelope of some 16,000 sq. ft., according to the Town’s Planner, there would be no way this excessive demand could be met. Therefore, the subdivision in question would, in fact, meet those requirements and should have been approved as presented at that time.”

Mr. Lily interpreted that the 100-foot wetland buffer should be returned to 50’foot setback. He made reference to Section 409.9 A. 2. Atty. Pelech noted that the Planning Board denied the application referencing the lack of 16,000 sq. ft. of buildable envelope. Atty. Pelech noted that the requirement is not stated in any part of the ordinance. He added that during the original hearing the RPC Circuit Rider and Mr. Wilson argued over the interpretation of the ordinance. Discussion ensued among Board members over the interpretation of the ordinance verbiage. Mr. Todd noted that the 16,000 sq. ft. building envelope reference came from the Circuit Rider’s recommendation. He commented that the Planning Board finds these types of experience as a learning issue.

Mr. Simmons reiterated that the applicant is before the ZBA because the applicant feels the Planning Board erred in its interpretation of the Section 409.9 ordinance. Atty. Pelech believed that Mr. Krebs' [RPC Circuit Rider] interpretation of the ordinance reference was wrong. Mr. Turchan asked if the Board determines that the applicants can revert back to the 50' setback, he believed they should return to the Planning Board.

Mr. Turchan moved and Mr. Field seconded the motion that the Planning Board erred in applying a 16,000sq ft standard in its interpretation of Zoning Ordinance Section 409.9 A.1.

Vote was unanimous (5-0).

Mr. Simmons entered into the record for Case 2003:31 and Case 2003:32, the certified 409.9.A. ordinance; and the Krebs' memo. He also entered into the record the Conservation Commission letter of November 19, 2003 and a letter from Christopher Ganotis, 18 Deer Run, an abutter who opposed the application.

Mr. Lily referred to June 9th letter beginning:

"Secondly, a wet-lands driveway crossing of under 2,000 to 3,000 sq. ft. would also be under the Town and State requirements for additional permitting, thus allowing the driveway and wetland crossing for McWilliam to be approved without a vote of the Town or State.

Mr. Lily entered into the record a letter from DES dated Nov. 17, 2003. Mr. Turchan referred to Section 409.7 that stated 3,000 sq. ft. of fill is an allowed amount by that ordinance. Mr. Lily said the fill would amount to 2,400 sq ft. Mr. Frank McWilliam commented that during the Planning Board meeting the fill issue was acknowledged as appropriate but because the 16,000 sq ft issue was contentious, the denial encompassed both, although incorrectly. Mr. Todd said the denial was to address impermeable surface through a wetland.

Mr. Simmons opened the floor to comments in support of the application. None were received. Mr. Simmons opened the floor to comments in opposition to the application. None were received.

Mr. Field moved and Mr. Johnson seconded the motion that the Planning Board acted correctly that an impermeable surface proposed within 100 feet of an Inland Wetland would violate Article V, Section 409.9.A.1 of the Zoning Ordinance.

Vote was unanimous (5-0).

2003:32 —**Nick and Emmanouella Birmbas**, 223 Post Road, North Hampton, NH 03862 – (1) requests an Appeal of Planning Board Decision by referencing NH RSA 676:5 III., (2) requests a Variance from Article IV, Section 409.9 A.1 for an impermeable surface within the 100' buffer, and (3) requests a Variance from Article IV, Section 409.9 A.2. Property location: 223 Post Road, R-3 zone district, Tax Map #022-014-001.

Mr. Simmons entered into the record for Case 2003:31 and Case 2003:32, the certified 409.9.A. ordinance; and the Krebs' memo. He also entered into the record the Conservation Commission

letter of November 19, 2003 and a letter from Christopher Ganotis, 18 Deer Run, an abutter who opposed the application.

This case is identical with the previous case and the applicants share the same decision from the Planning Board. Because of these facts, the Board moved ahead quickly.

Mr. Turchan moved and Mr. Field seconded the motion that the Planning Board erred in applying a 16K sq ft standard in its interpretation of 409.9 A.1.

Mr. Pelech noted that the applicant did not object to or petition the ZBA regarding Item #2 of the Planning Board decision.

Mr. Simmons opened the floor to comments in support of the application. None were received.

Mr. Simmons opened the floor to comments in opposition to the application

Mr. Bob Durant, asked when he could comment on his concerns of the case. Mr. Simmons said that those concerns should be raised during any subsequent Planning Board application hearing.

Vote was unanimous (5-0).

Mr. Pelech requested the withdrawal of his request for the two variances.

Mr. Field moved and Mr. Simmons moved to accept the applicant's request to withdraw its request for a variance regarding the impermeable surface and the 16,000 sq. ft.

Vote was unanimous (5-0).

2003:33 —Sabrina Dronsfield, 130 Exeter Road, North Hampton, NH 03862 —requests a Special Exception to Article V, Section 507 to operate a hair salon business as a home occupation. Property location: 130 Exeter Road, R-3 zone district, Tax Map #010-007-000.

Sabrina Dronsfield stated that she complies with all the requirements of Section 507, adding she would not sell any products on site. She noted that she is seriously considering not having a sign and as a single person operation, there would only be one customer at a time.

Mr. Field expressed concern about hair processing products/toxic chemicals leaching possibly into the water supply. He asked if Ms. Dronsfield had any testimony that the discharge of wastewater from cosmetology products does not damage the water supply. Mr. Simmons commented that the ordinance does not allow the Board to ask about the wastewater issue. Mr. Turchan explained a similar situation where a hair stylist/cosmetologist had been accused of polluting and it was found that all products were biodegradable and they did not negatively affect the water supply. Mr. Turchan also explained that 185 gallons of water is used per day per hair stylist and hoped their septic system is reasonably new. Mr. Turchan wanted to limit the salon to one hair stylist/cosmetologist license.

Mr. Simmons asked for comments in support. None were received.

Mr. Simmons asked for comments in opposition. None were received.

Mr. Field commented that he is concerned about the aquifer and would like the DES to verify that there is no toxic discharge with the hair stylist/cosmetology products as part of the conditions of approval. Mr. Field suggested that the Health Officer and the Water Commission should be contacted and requested a determination.

Mr. Field moved and Mr. Johnson seconded the motion for approval of the application with the following conditions:

- (1) The applicant must supply to the Building Inspector, Material Safety Data Sheets [MSDS] information for the products to be used in the hair salon business at the start of initial operation,**
- (2) The hair salon business is to be operated only by one (1) licensed cosmetologist, and**
- (3) The applicant must maintain up-to-date compliance of MSDS information when she changes cosmetology products.**

Mr. Johnson suggested that Ms. Dronsfield keep a file of the MSDS information sheet for all products she uses in her business. Mr. Luff was strongly opposed to Ms. Simmons motion with the belief that it is an unenforceable issue.

Vote was 3-1-1 with Mr. Luff opposed to amendment #3 and Mr. Simmons abstained.

Acceptance of Rules of Procedure

Mr. Simmons discussed his suggested amendments.

Mr. Turchan moved and Mr. Simmons seconded the motion to approve the amended rules of procedures.

Vote was unanimous (5-0).

Mr. Simmons thanked Mr. Field for his input and recommendations in editing the Rules of Procedure.

Acceptance of ZBA Forms

Mr. Simmons moved and Mr. Turchan seconded the motion to accept forms as amended.

Vote was unanimous (5-0).

December 17th Scheduled Meeting

Mr. Field moved and Mr. Simmons seconded the motion to cancel the meeting in December in honor of the impending Holiday season.

Vote was unanimous (5-0).

Adjournment

Meeting adjourned at 11:21 PM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary