



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
January 21, 2004

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, January 21, 2004 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 Wednesday, January 7, 2004 and published in the Hampton Union on Friday, January 9, 2004.

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: (1) Ken Worrell and (2) John Woodworth.

Staff Present: (1) Richard Mabey, Building Inspector; (2) 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.

Mr. Simmons noted that new Rules of Procedure were adopted November 19, 2003 and requested all members present to sign the document. He remarked that the signed Rules of Procedure would be certified and registered with the Town Clerk accordingly. Mr. Simmons noted that the new Rules of Procedure would not apply for this meeting but would apply to meetings thereafter. Mr. Simmons and Mr. Field notarized the signatures on the Rules of Procedure. Mr. Simmons requested that Cadillac Auto of Boston (Case #2004:03) receive the new Rules of Procedures. Ms. Arrain explained that she would distribute them accordingly.

2004:03 — Cadillac Auto of Boston/Peter Fuller, 19 Maple Road, North Hampton, NH 03862 – requests Variances to Article IV, Section 406.9 to create a back lot as part of the subdivision plan currently pending before the Planning Board. Property location: 19 Maple Road, R-2 zone district, Tax Map #006-131-000.

Mr. Simmons referred to a letter dated January 116, 2004 from Stephanie Guy of Donahue, Tucker & Ciandella, who represents the applicant. In the letter Ms. Guy requested that Case 2004:03 be continued until the February 18, 2004 meeting to allow for adequate time to notice the revised abutters' list.

Mr. Field moved and Mr. Simmons seconded the motion to continue Case #2004:03 until the February 18, 2004 meeting.
The vote was unanimous (5-0).

2004:01 — Dean Stevens, 273 Atlantic Avenue, North Hampton, NH 03862 –requests Variances to (a) Article IV, Section 405 and (b) Article IV, Section 406.3 (b) to construct a 5-unit multi-family structure in the R-2 zoning district. Property location: 247 Atlantic Avenue, R-2 zone district, Tax Map #007-128-000.

Case Presentation

Gary Stevens, representing the applicant, began his presentation displaying a map of the lot and the surrounding area. He stated that four of the five housing units would be allocated as low-cost housing. He explained that the lot is located in the R-2 zoning district. Multi-unit housing is not allowed in the R-2 district and requested a variance to allow construction in the R-2. The second variance referred to relief requested for the lot size that is smaller than required for multi-unit housing.

Mr. Stevens pointed out how other multi-unit housing buildings exist in close proximity, referencing at least five (5) multi-family housing units. Mr. Field requested that the Building Inspector confirm the legality of these units and determine how long they have existed. He queried if they were grandfathered.

Mr. Stevens noted that the building would not be used for industrial use and he would retain a large stand of trees for privacy for the abutters. Mr. Stevens believed the proposed development would not diminish the value of surrounding properties. He commented that the home on Lot #007-130-000 (243 Atlantic Avenue) is far from the proposed development and is separated by a large buffer of trees. The westerly neighbor is a single-family home with a barbershop operation. Mr. Stevens stressed the need for affordable housing in town and referenced that this same issue was addressed as a priority in the Master Plan. He added that his project would provide a much needed addition to this housing need. Mr. Stevens remarked that the DOT estimated that over 6,000 vehicles travel daily on Atlantic Avenue. A building of the proposed size would not increase traffic, fire danger, traffic safety issues and congestion.

Mr. Stevens stated that according to zoning ordinance, a five unit housing required five (5) acres of land and 500 ft frontage. He remarked there are no wetlands in the area that would be affected and no water resources are compromised. Mr. Stevens noted that test pits have been conducted. He commented that the R-2 district in which the lot is located is surrounded by the I-B/R. His lot is

abutted on two sides by the I-B/R on a well-traveled street and close to Route 1. No other lot has such conditions. Mr. Stevens commented that the site could safely support a septic system. He further noted that since the lot contains no structures, the applicant could assume the cost of constructing the 5-unit housing and make it available as low-cost housing that is greatly needed. The lot has been in the ownership of the applicant for over 35 years.

Mr. Stevens noted that by providing affordable housing on this property, individuals who work in or near the town could remain to live in the community. Mr. Stevens displayed a 1968 building permit that allowed for an 8-unit structure on the same site in 1968 that was issued to the applicant.

Mr. Simmons recessed the meeting at 8:12 PM

Mr. Simmons reconvened the meeting at 8:17 PM

Findings of Fact (RSA 674:33)

Mr. Stevens addressed the findings of fact.

Board Observations/Comments

Mr. Simmons commented that the 1968 building permit data does not signify that the permit was granted because it contained only two Zoning Inspector signatures. Mr. Stevens presented a letter noting that the building permit lapsed and was null and void.

Mr. Field asked why the applicant isn't interested in building a duplex. Mr. Stevens responded that the economies of scale preclude him from building anything less than the 5-units that would provide him with a reasonable return on investment. Mr. Field asked what instrument/proof had the applicant provided that demonstrated that restrictions would be placed on the property for affordable housing. Mr. Stevens restated that although the lot could support a single family home, he felt compelled and excited about the prospect of providing affordable housing to the community. This was his prime reason for the development of the lot.

Mr. Simmons requested that the applicant provide a copy of his presentation notes for the town's record. He indicated that perhaps the Board would not be able to make a decision at this meeting because (1) the Building Inspector must report to the Board on the compliance or non-compliance of the multi-units cited and (2) how the affordable housing restriction would be maintained and controlled.

Public Comment

Mr. Simmons opened the meeting to public comment at 8:39 PM.

In Support of the proposition– None.

In Opposition

Peter Doyle, 245 Atlantic Avenue, an abutter, expressed concern that his lot supports a single family and he wondered how the Stevens' lot could support 5-unit housing on less than an acre. He remarked that if the lot were in the I-B/R it would not meet the ordinances for a multi-unit development. Mr. Doyle did not support the proposal. He noted it is an intensive use of the lot with an average of 10 vehicles entering and exiting with regularity. He noted the applicant's lot contains a substantial amount of fill and a large structure located on the site would loom over Mr. Doyle's single family home on the abutting lot.

Mr. Field asked what would be the rental charge. Mr. Stevens responded that the information he had researched indicated the rental charge could possibly average \$800.00 for a two-bedroom unit.

Dr. Steven Paul, 230 Atlantic Avenue, an abutter, questioned how the value of his property would not be diminished. In response, Mr. Simmons asked Mr. Stevens how Dr. Paul's concern could be answered. Mr. Stevens indicated he could get a real estate appraisal. Dr. Paul indicated concern about traffic flow and safety issues. Mr. Simmons noted that the applicant had provided data from a traffic study conducted by the NH-DOT. Dr. Paul questioned the significance or burden of the applicant's lot abutted on two sides by the I-B/R whereas his lot is abutted on two sides as well.

Mr. Terry Conklin, 3 Cotton Farm Lane, noted that the applicant had not demonstrated a hardship. He urged the Board to get more information about the affordable housing restrictions/requirements to maintain the affordability aspect.

Mr. Simmons closed the public meeting at 9:12 PM.

Mr. Field moved and Mr. Johnson seconded the motion to table the application until the February 18, 2004 meeting for the purpose of (1) securing a thorough analysis of apartments in the district by the Building Inspector, (2) clarifying the definition of affordable housing and the manner in which this is to be accomplished (3) estimating rental fees and determine if they address affordability (4) submitting a list of surrounding property values.

Mr. Luff remarked that the Master Plan is a tool of the Planning Board and the Board should not consider that issue. Mr. Field remarked that he felt the Master Plan should be considered. Mr. Simmons noted that he saw merit in both opinions. Mr. Turchan indicated that the Board should follow zoning ordinance since it is policy rather than considering the Master Plan, which is only a guideline. Mr. Johnson remarked that additional information is needed before the Board can come to a conclusion.

The vote was unanimous (5-0) to table the application until the February 18, 2004 meeting.

2004:02 — Seth Hickey, 66 Mill Road, North Hampton, NH 03862 —requests a Variance to Article IV, Section 409.9 (A) 2 for relief from the wetland setback for a single family home.

Property location: 269 Atlantic Avenue, R-1 zone district, Tax Map #014-170-001.

Messrs. Simmons, Johnson and Field recused.

Mr. Turchan was seated as Chairman.

Mr. Worrell was seated for Mr. Simmons.

Mr. Woodworth was seated for Mr. Johnson.

A four-member board was seated. Mr. Turchan provided the applicant with the opportunity to continue until next month when a full board of five (5) members would be available. Mr. Hickey waived a hearing on a five member Board.

Case Presentation

Mr. Hickey explained that he wanted to build a porch on the back corner of his proposed house that would encroach into the wetland setback by 128 square feet. With the proximity of the house to the

wetland, the applicant indicated that the property is highly susceptible to an invasion of mosquitoes and other bugs. As a result, the proposed screened in porch area would increase/extend the use of their property. With the porch, they would use a lesser amount of pesticides, thus reducing chemical runoff and ground saturation.

Findings of Fact (RSA 674:33)

Mr. Hickey satisfactorily addressed the findings of fact.

Board Observations/Comments

Mr. Worrell asked if the applicant could move the porch to another side of the house. Mr. Hickey said the house design best met the family's living needs. Mr. Woodworth asked if the house plans met all other building permit requirements. Mr. Hickey indicated it did with the exception of the porch/deck area.

Public Comment

None in either support or opposition.

Mr. Worrell moved and Mr. Luff seconded to approve the variance for a 16 ft screened in porch at the back of the house.

The vote was unanimous (4-0) to grant the variance.

Mr. Simmons recused.

Mr. Woodworth retired from the Board.

Mr. Johnson was seated as Chairman.

Mr. Field was resealed.

2003:26 — Michael Iafolla, 114 Woodland Road, North Hampton, NH 03862 –requests Motion for Appeal for a Re-Hearing regarding the November 19, 2003 approval 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. Johnson noted that another request on this case has been submitted and requested Board

Mr. Field didn't think anything new had been brought to the Board's attention in the rehearing petition. Both Mr. Luff and Mr. Worrell agreed with Mr. Field. Mr. Field noted that Mr. Iafolla requested that the broader interpretation should be considered. Mr. Field indicated that it is common practice for attorneys and doctors to conduct practices within their home. Mr. Turchan noted that the verbiage "shall" is the determining point. Mr. Johnson agreed in principal with the Board members.

Mr. Luff moved and Mr. Worrell seconded the motion to deny the request for rehearing.

The vote was 3-0 with Mr. Turchan and Mr. Johnson abstaining.

Mr. Simmons was resealed.

Mr. Worrell retired from the Board.

Other Business

Mr. Simmons moved and Mr. Turchan seconded the motion to make a certain administrative change to minutes of the September 3, 2003 minutes.

The vote was 4-0 with Mr. Field abstaining.

Minutes from Prior Meetings

Review of November 19, 2003 Minutes

Mr. Field moved and Mr. Luff seconded the motion to adopt the minutes.

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

Adjournment

Mr. Field moved and Mr. Simmons seconded the motion to adjourn.

The vote was unanimous (5-0) to adjourn.

The meeting adjourned at 10:08 PM

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator