



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
February 18, 2004

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, February 18, 2004 in the Roberta T. Craig Room, North Hampton Public Library. Notice of the meeting was properly posted at the Library, Post Office and Old Town Offices/Town Clerk on Friday, February 6, 2004 and published in the Hampton Union on Friday, February 6, 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: None.

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 7:02 PM

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

Preliminary Matters; Procedure; Swearing in of Witnesses

Mr. Simmons explained the new Rules of Procedure would be applicable to this meeting to members of the audience. He noted that copies of the Rules were available at the literature table for those who wanted a copy. He swore in all persons present who would give testimony or present comment on matters to be considered by the Board.

Old Business

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. This session is a continuation from the January meeting.

Mr. Simmons noted that the applicant requested a continuation until the March 17, 2004 meeting. Peter Doyle and Dr. Steven Paul, abutters, noted that they would not object to a continuance. Mr. Simmons expressed concern that a mechanism is not in place for abutter notification for a case continuation request. He was concerned that abutters would be inconvenienced. Mr. Field

remarked that the Board should not burden the town staff with abutter notification in this particular respect. Mr. Turchan suggested that any abutter or interested party should contact the town staff in advance of a regularly scheduled meeting to determine the status of a pending case.

Mr. Field moved and Mr. Simmons seconded the motion to continue Case #2004:01 until the March 17, 2004 meeting.

The vote was unanimous (5-0) to continue Case #2004:01 until March 17, 2004.

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.

Case Presentation

Atty. Christopher Boldt represented the applicant. Mr. Simmons remarked that Atty. Ells, representing the Dowds, abutters, submitted a letter in opposition to the application. Mr. Simmons presented Atty. Boldt with a copy of the Ells' letter dated January 20, 2004.

Atty. Boldt opened that the application referred to a subdivision plan accepted by the Planning Board. The backlot did not meet the subdivision regulation and the applicant requested relief to create a legal backlot. Atty. Boldt noted that it was proposed that the entire Fuller property, Tax Map #006-131-000 was not a lot of record prior to March 10, 1992, according to Section 302. He argued that it was a lot of record and the applicant was entitled to create one backlot.

Mr. Field noted that the 1980 deed reflected the original 55-acre lot of record. The parcel was altered in 1995, and as such, the remaining portion is not a lot of record as of 1992 as is defined by Section 302. Atty. Boldt observed that the tax map number had remained the same since 1980 and as such it met the definition for a "lot of record." He believed the definition of a backlot is ambiguous and it opened the ZBA to interpret the definition in the applicant's favor. Atty. Boldt remarked that the original parcel of which a portion was culled out had frontage on Woodland Road. Mr. Field raised the point that the Board had to determine if the original subdivision was a backlot. Atty. Boldt said there was no new deed since the Boulders subdivision. He distributed Plan D-23763 (Boulders' subdivision) that displayed 186' frontage on Woodland Road, which established a subdivision, not a backlot creation. Mr. Field questioned whether ordinance 406.9 should apply in this case.

Sandra Woodworth, 19 Maple Road, presented a photo of the lot showing the type and location of vegetation. The Board considered the concerns voiced by abutters, Lagassa and Dowd, as referenced in their letters to the Board. Atty. Boldt remarked that some abutters have suggested that the Fuller house could be torn down, which would allow the frontage to be re-calculated to sufficiently meet the frontage requirements for a standard lot. He said the applicant did not perceive the destruction of the historical farm and grounds as keeping with goals of the Master Plan. Atty. Boldt noted that the connection of the lot's tax map number and the date of the deed provide a pre-existing connection to the lot prior to 1992. He disagreed with Town's counsel interpretation that

the applicant's lot was not a legal lot of record as of March 10, 1992.

Findings of Fact (RSA 674:33)

Atty. Boldt addressed the findings of fact.

Atty. Pelech remarked that he was asked by the Planning Board to determine if the applicant's lot was a lot of record as of 1992 and not if it was a back lot. When asked by Mr. Simmons if the Boulders' subdivision was a backlot, he answered that in his opinion, it was not.

Atty. Boldt noted that the design of the five-lot subdivision is the cleanest representation, meeting all yard and lot requirements. Mr. Field referred to Dr. Lagassa's letter. The Board discussed the background of the backlot ordinance as described by Dr. Lagassa and Mr. Turchan's recollections.

Mr. Simmons summarized the questions facing the Board: Is this a grandfather lot of record? Is Lot 006-131-001 a backlot subdivision? Is the applicant entitled to a variance according to Section 406.9? Mr. Simmons asked Atty. Boldt if it was possible to waive an ordinance date.

Public Comments opened at 8:44 PM.

In Support:

Sandra Woodworth, 19 Maple Road, expressed her support believing the historic value of the house should be preserved and remarked that the creation of the backlot would allow for that preservation.

In Opposition:

Heidi Wood, 32 Maple Road, an abutter, stated she received notice only a few days ago and requested more time to prepare for the case. Atty. Michael McCarthy represented the Woods and said he was not prepared to adequately represent his clients but later recanted his statement.

The meeting was recessed at 9:00 PM.

The meeting was reconvened at 9:15 PM.

After the recess, Ms. Arrain returned with the applicant's file and provided verification to the Board that abutter notification was mailed on February 4, 2004, 13 days prior to the existing meeting. The Board had legally met its obligation to notify abutters.

Mr. Johnson left the meeting at 9:16 PM because of illness.

Atty. Boldt requested a full five-member board and requested that the application to be continued until the March 17, 2004 meeting. The Board honored the applicant's request.

New Business

2004:04 — **Helen and John Savage, P.O. Box 425, Rye, NH 03870** –requests Variances to Article IV, Section 409.9 B (1) to allow structures and impermeable surfaces within the 75' tidal wetlands buffer and 50' inland wetlands buffer. Property location: 3 and 5 Appledore Avenue, R-2 zone district, Tax Maps #001-020/021-000.

Case Presentation

Atty. Pelech represented the applicant.

The meeting recessed at 9:23 PM

The meeting reconvened at 9:25 PM

Mr. Field questioned if there was a conflict of interest with Atty. Pelech appearing before the Board. Atty. Pelech stated that he never rendered an opinion for the ZBA and felt there was no conflict of interest in his representing the applicants, John and Helen Savage. Mr. Field speculated that attorneys that represent the town perhaps should not represent applicants. Atty. Pelech waived a full-member board hearing.

Atty. Pelech noted that during a 1980's action, a manufactured home was built on 3 and 5 Appledore Avenue, respectively. Mr. Field questioned if any variances were granted. Mr. Savage stated that a variance had not been granted. Atty. Pelech added that the applicants appeared before the Little Boars' Head [LBH] ZBA, Conservation Commission and received permits from the NH DES for homes to be constructed on the lots. He commented that the applicant applied the 75' tidal wetland setback from the highest observable high tide because the building envelope is less than 16,000 sq. ft. Atty. Pelech demonstrated the location of the two homes and why relief from the tidal wetland setback is requested. He further added that the Conservation Commission and NH DES favored the location of the new structures. Atty. Pelech noted that because of requirements of setbacks for septic systems, the house locations projected into the tidal wetland setback.

Atty. Pelech observed that the lots are non-conforming because of yard and lot requirements and wetland setback requirements. Mr. Field inquired if the septic system could be relocated. Atty. Pelech responded that a variance would be required if they relocated the septic. Mr. Turchan indicated that a forward re-positioning would interfere with septic requirements. Mr. Pelech said relocating the septic systems was not considered. Atty. Pelech noted the applicant had met the other setback requirements. He added that there was controversy when the two manufactured homes were constructed. At the LBH ZBA meeting, the neighbors expressed support for the construction of the new structures. Mr. Pelech provided the Board with photographs of the current details of the property.

Findings of Fact (RSA 674:33)

Atty. Pelech addressed the five criteria.

Board Comments/Questions

Mr. Field inquired into an explanation of a highest observable tide. Pelech said that a NH Soil Consultants' wetland soil scientist provided the verification by observing a "rack line" and verified it with a stamped plan that was provided to the Board to view.

Mr. Savage noted that the 4-bedroom septic system is fully approved and no failure had ever occurred. He remarked that although new septic requirements have changed, the current system is fully adequate. Atty. Pelech noted that LBH ZBA required that the deck should not include a solid roof, but rather a slatted roof.

Public Comments opened at 10:02 PM.

In Support:

Michael Burnett, 1 Appledore Avenue, an abutter was sworn in. He strongly supported the upgrade of the property with the new houses noting it would be an improvement to the neighborhood. Mr. Burnett noted that a neighbor, Mr. Houghton, also supported the Savages' upgrade project.

John and Helen Savage, 3 and 5 Appledore Avenue, expressed their support, as well.

In Opposition: None

Public comments were closed at 10:04 PM.

Mr. Turchan moved and Mr. Luff seconded the motion to approve the request for a variance to Article IV, Section 409.9 (A) 1 for relief from structures and impermeable surfaces within the 75-foot tidal wetland setback and 50-foot inland wetland setback.

Mr. Field moved and Mr. Turchan seconded the motion to amend by requiring variance approval contingent on conformance to any requirements as established by the Little Boars' Head Zoning Board of Adjustment Case #04-1 approval dated January 27, 2004.

The vote for the amendment was unanimous (4-0).

The vote for the motion as amended was (4-0).

2004:05 — Joe Pandolfo, 3 Meadowcroft Road, Burlington, MA 01803 —requests Variances to (a) Article IV, Section 405 to allow construction of a Muffler/Brake Center and (b) Article V, Section 506.3 B.C. and E. to install a free-standing ground/pylon sign and wall signs. Property location: 27 Lafayette Road, I-B/R zone district, Tax Map #007-057-000.

Case Presentation

Joe Pandolfo representing PCI North Realty remarked that he purchased the property in December 2002. Mr. Hodsdon, Midas Muffler Franchisee, was in attendance. Mr. Pandolfo indicated that Mr. Jeff Eiras, Owner of ProWash, had intended to be present. Mr. Pandolfo presented color

photographs of the previous and proposed architecture of the new complex.

Mr. Pandolfo noted that the ZBA had granted a variance to the former owners, Transaction Associates, to operate a Car Wash, Lube Center and Detailing Center. According to Atty. Phoenix, who had represented Transaction Associates, the ZBA granted a variance because it was unsure in what category the Transaction Associates' project would apply. Mr. Field recalled that the Board wanted to limit expansion of the Transaction Associates original proposal and decided upon the granting of the variance as a means by which to establish limitations.

Mr. Eiras of ProWash, gained approval for a lube center to his car wash center located across the street at 22 Lafayette Road. Messrs. Pandolfo and Eiras reached an agreement not to compete. Mr. Pandolfo requested a change in the approval received previously by Transaction Associates. He observed that his proposed plan is an improvement over the Transaction Associates plan. His plan included substituting the Midas Muffler facility for the car wash and the car detailing facility to retail and/or office space. Mr. Pandolfo noted that he closed the second entrance to Seacoast Village that would alleviate pass-through traffic flow. Additionally, he relocated the driveway entrance from Cedar Road. Peter Kasnet, Vice-President of the Seacoast Village Condominium Association, approved of the Seacoast Village entrance as demonstrated by Mr. Pandolfo.

Mr. Pandolfo list the positive changes of this proposed project:

- Setbacks, landscaping, parking requirements are met,
- Previous plan specified a 2-story building that is now reduced to a 1-story building,
- Previous plan had 8 automotive bays facing Lafayette and proposed plan had only 6 bays,
- Previous plan had a total of 16 automotive bays and current plans had 9 bays,
- New use will generate much less traffic,
- Closure one entrance and relocation of entrance on Cedar Road,
- Business hours only operation of proposed plan opposed to 24-hour operation of previous plan,
- Less water usage [no car washing facilities],
- New plan is closer to desired architecture style than the former plan.

Board Comments/Questions

Mr. Pandolfo noted that he met all the Special Exception requirements. Mr. Field asked how the applicant could maintain the agreement with Eiras. Mr. Pandolfo responded that the restriction would be included in the deed. Mr. Field remarked that in NH restrictions on trade are not looked upon favorably and possibly are unenforceable. Mr. Field asked about establishing limits on a construction schedule. Mr. Pandolfo commented that he would be completed within a year.

Public comments opened at 10:37 PM.

In Support:

Peter Kasnet, Seacoast Village Condominium Association, asked that the bay doors be closed during operating hours. Bruce Hodsdon, Midas Muffler Franchisee, stated the facility would not be air-conditioned and closing the bay doors would create an unbearable work environment in extreme weather conditions. He further added that Route 1 traffic is noisy and would create the greatest

volume of sound. In addition, he noted that Seacoast Village occupants would not be able to hear any adverse noise from the bay doors since noise would not travel well at the angle and location of the bays. Mr. Pandolfo remarked that he could plant some trees or shrubs to help muffle noise. Mr. Simmons noted that noise abatement is a Planning Board issue.

In Opposition: None

Public comments were closed at 10:47 PM.

Mr. Field moved and Mr. Simmons seconded the motion to grant a Special Exception to operate a service station/muffler shop from a previous variance granting for a car wash with the condition that construction is to be completed within 2 years.

Vote was unanimous (4-0) to approve the Special Exception.

Sign Variance Request

Mr. Pandolfo requested a variance to allow larger wall signs for the Jiffy Lube and Midas Muffler facilities. He requested a 36-square foot wall sign for the Jiffy Lube and a 28-square foot wall sign for the Midas Muffler. Mr. Pandolfo noted that the remaining office and/or retail locations would adhere to the ordinance requirements for wall signs.

Findings of Fact (RSA 674:33)

Mr. Pandolfo successfully addressed the five criteria for the variance request for the wall signs.

Board Comments/Questions

Mr. Field suggested conformance to the zoning ordinance on all signs. Mr. Pandolfo said Jiffy Lube would open March 15, 2004 and needed signs installed. Mr. Pandolfo requested that the Board decide on the disposition of his variance request for the Jiffy Lube and Midas Muffler wall signs at this meeting. He noted that he would return on March 17, 2004 to address his variance request regarding the freestanding/pylon sign.

Mr. Field moved and Mr. Turchan seconded the motion to approve the wall signs for Jiffy Lube and Midas as presented.

The vote was unanimous (4-0) to grant the variance for the Jiffy Lube and Midas Muffler wall signs as presented.

Mr. Field moved and Mr. Turchan seconded the motion to continue consideration of the variance request for the freestanding/pylon sign until March 17, 2004.

The vote was unanimous (4-0) to continue consideration of the variance request for the freestanding/pylon sign until March 17, 2004.

Minutes from Prior Meetings

Review of January 21, 2004 Minutes

Mr. Simmons moved and Mr. Turchan seconded the motion to approve the minutes as amended.

The vote was unanimous (4-0) to approve the minutes as amended.

Adjournment

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

The vote was unanimous (4-0) to adjourn.

The meeting adjourned at 11:17 PM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator