



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
March 17, 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) Ted Turchan, (5) Jennifer Lerner seated for Robert B. Field, Jr.

Alternate(s) Present: Ken Worrell

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 7:04 PM.

Mr. Simmons seated Ms. Lerner for Mr. Field, 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 standard Rules of Procedure that would be applicable to this meeting to members of the audience. He swore in all persons present who would give testimony or present comment on matters to be considered by the Board

2004:03 — **Cadillac Auto of Boston/Peter Fuller, 19 Maple Road, North Hampton, NH 03862** – requests Variances to Article IV, (a) by interpreting the definitions of Zoning Ordinance Section 302 (concerning Lot of Record) and Section 406 (concerning Back Lot Subdivision) so as to find that the Applicant's existing Lot 131 is a "Lot of Record" prior to March 10, 1992; or (b) by granting a variance to the March 10, 1992 date requirement of Section 406.9; or (c) by granting a variance to Zoning Ordinance Section 406 Dimensional Table (concerning 175 foot frontage requirement in the R-2 District). Property location: 19 Maple Road, R-2 zone district, Tax Map #006-131-000. This session is a continuation of the February meeting.

Mr. Simmons noted that the applicant requested postponement of their case hearing because of the dangerous road conditions due to the winter storm.

Mr. Simmons moved and Mr. Luff seconded the motion to continue the case until the April 21, 2004 meeting at Town Hall.

The vote was unanimous (5-0).

2004:06 — Lou Datilio/Danielle Balser, 67 Winnicut Road, North Hampton, NH 03862 – requests a Variances to Article IV, Section 406.9 for relief from the requirement that a lot must be 5 acres and in existence before March 1992 before it can be subdivided allowing for a backlot. Property location: 67 Winnicut Road, R-3 zone district, Tax Map #023-006-000.

Mr. Simmons noted that the applicant had recently withdrawn their application and no further action would be taken on the application.

Old Business

2004:05 — Joe Pandolfo, 3 Meadowcroft Road, Burlington, MA 01803 –requests Variance to Article V, Section 506.3 B. and C. to install a freestanding ground/pylon sign. Property location: 27 Lafayette Road, I-B/R zone district, Tax Map #007-057-000. This session is a continuation of the February meeting.

Mr. Simmons explained that the applicant appeared before the Board in February and since his case was not completed, he returned to finish the relief requests. Mr. Pandolfo introduced himself to the Board and audience. He remarked that his original submission included a 77 sq ft sign that was internally illuminated. Mr. Pandolfo introduced a chart showing how he had reduced two dimensions and changed the illumination to external lighting. He stressed that he had three tenants who are nationally recognized businesses who preferred marketing exposure through signage advertising. Mr. Pandolfo remarked that on his drive past his property location, he observed that his proposed sign would interfere with his neighbor, the Seacoast Village sign. He offered to move his sign back to avoid obstructing the Seacoast Village sign. Peter Kaznet, Vice-President of Seacoast Village Condominiums was in audience. Discussion ensued about appropriate placement of the sign.

Public Comments In Support: None

Public Comments In Opposition:

Mr. Kaznet requested that Mr. Pandolfo adhere to the current sign ordinance. He referenced that the Seacoast Village Mall sign adheres to the ordinance. Mr. Pandolfo responded that he wanted to be a good neighbor but noted that if the sign were reduced, he would have to locate it where it was originally planned.

Mr. Pandolfo addressed the Five Findings of Fact stating:

#1 – Variance request does not diminish value because the whole project improves the property.

#2 – Variance request is not contrary to public interest because his property is a large lot with

established, nationally-prominent tenants big lot and national users and variances have been granted to Home Depot and others

#3 – Substantial justice would be served because his three tenants would get maximum coverage for their business.

#4 – Established hardship by stating that drivers focus on signs, not on buildings and a prominent sign is very important. He cited at a Manchester site where the bldg was located 20 feet from the road and the public did not realize the business existed until a sign was erected.

#5 – Variance request meets the spirit of the ordinance because the sign compliments the entire development and the sign is not overly large.

Mr. Turchan remarked that the sign ordinance was written in the 1970's and the town could not have anticipated or expected the density of businesses that need appropriate signage. Mr. Kaznet reiterated that the condo association would expect Pandolfo to stay within the ordinance requirements. Mr. Pandolfo considered withdrawing his application, but decided ultimately to continue his application.

Jeff Hillier, 3 Glendale Road expressed concern about signage variance and the jockeying and negotiating involved in Mr. Pandolfo's presentation.

Mr. Simmons suggested that if an approval was granted he would like to see it contain a condition on the sign location. Mr. Johnson remarked that in his deliberations he tries to consider business needs but noted that the close proximity of Lafayette Road to the buildings eliminated the need for the larger sign. Mr. Luff said that the Board increased the size of the wall signs that increasing the pylon sign is inappropriate. Ms. Lerner noted that the sign contained a lot of white space that could be reduced, thus reducing the size of the overall sign dimensions.

Mr. Johnson moved and Ms. Lerner seconded the motion to deny the application.

The vote was 4-0-1 with Mr. Turchan abstaining.

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 February meeting.

Mr. Simmons recapped the history of the case up to the present time. He noted that Mr. Stevens raised the issue at the January meeting that there were numerous multi-family dwellings in the area. Abutters remarked that if the Stevens proposal were approved it could have a negative impact on the neighborhood. Also there was a question on how the town or Board could monitor the conditions/requirements for affordable housing.

Mr. Stevens responded to the questions that arose from the January meeting that he was asked to provide:

- (1) Legality of local multi-family housing

- (2) Definition of affordable housing
- (3) Seacoast Rent Data
- (4) Land Use Restriction Enforcement
- (5) Analysis of how Property Value would be affected.

Mr. Steven provided the following information. Affordable housing was defined in RSA 204.C: 5-6. According to HUD \$74,300 is the median income for North Hampton. The town is considered as Metro area. Using the NH formula, an appropriate low-income rental fee for a 2-bedroom is \$929. and that includes utilities. \$1,400. is an appropriate moderate-income range rental fee that includes utilities.

Mr. Luff remarked that it is not the Board's position to determine the validity of the affordable housing but rather to address the five criteria. Mr. Simmons observed that Mr. Stevens was addressing the spirit of the ordinance in his argument. Mr. Turchan said any reference to the Master Plan is just a wish list and not an actionable item.

Mr. Stevens explained how he used NH RSAs and HUD information to determine the low and moderate-income rental figures. Mr. Stevens remarked that his 5-unit housing project would provide an opportunity for some people to live in North Hampton who would otherwise not have that option made available to them. Mr. Stevens referenced the March 9, 2004 letter to the Board in which he provided responses to the five questions the Board had asked of him during the January 2004 meeting.

When asked by the Board on how can restrictions can be enforced, Mr. Stevens responded that the state allows for deeded restrictions as a method for enforcement. Mr. Turchan asked who would enforce the restrictions? Mr. Mabey, the Building Inspector, responded that if there were a complaint, the issue would be addressed by his department. Mr. Turchan expressed concern that the Town would have to create a position to address this issue. Additional human resource would be required to stay current on HUD/affordable housing guidelines. Mr. Stevens suggested that possibly the Building Inspector, Code Enforcement Officer or Zoning Administrator could be part of the enforcement strategy.

Public Comments

Mr. Simmons asked for comments in favor or the project: None were cited.

Mr. Simmons asked for comments in opposition to the project.

Peter Doyle, 245 Atlantic Avenue referenced the Simplex case as the test for hardship. He felt the applicant had not established hardship. In the spirit of the ordinance he stated there is no multi-use allowed in the R-2 zone and within the I-BR zone, Mr. Doyle stated to build 5-unit housing would require 6 acres and 650 feet of frontage. For public interest he reference the troublesome traffic issue for ingress and egress. Mr. Doyle noted there would be congestion with 20 inhabitants on a small parcel and referenced that the septic issue is uncertain. He stated the lot would be covered with paving [an impermeable surface] to the high percentage and would create runoff and water

quality issues. Mr. Doyle submitted a letter from Lorraine and Holly Blake of 249 Atlantic Avenue who as abutters strongly objected to the Stevens project. He said hardship is non-existent because the applicant could build a single-family home on the lot. Hardship does not prohibit any reasonable use of the property, but the use of this property was unreasonable and did not meet the zoning ordinance. He felt overcrowding would be unfair to the possible tenants. Mr. Doyle referenced Section 702 stating that the Stevens proposal does not meet the standards of that ordinance and closed that the property value of surrounding properties would be damaged. Mr. Doyle stated that zoning ordinance is the voice of this town and the use as proposed grossly overuses the property and requested that the Board deny the application.

Dr. Steven Paul, 230 Atlantic Avenue, agreed with Mr. Doyle's presentation. He was opposed to the Stevens' project remarking that the hardship criteria were not met and property values would be diminished.

Harold Mailhot, 10 Glendale Road remarked that the wooded area behind the lot is dangerous because trees and tree limbs regularly fall. He was concerned that if there were tenant children there would be a potential for danger.

Mr. Stevens noted that he attempted to present facts in his presentation and compared his project to surrounding multi-family homes. He reaffirmed that his project is within the reasonable limits. Mr. Stevens referenced the appraiser's report stating that he expected an average of 3 members per family and 2 vehicles per 3 individuals. He said a lot of the issues raised would be addressed at the Planning Board review. Mr. Stevens stated that his housing proposal is a reasonable use and the multi-family septic system would be fully adequate and there would not be any unsafe traffic issues associated with the site. He closed stating that although there are ordinances, there was also a Zoning Board to allow for relief from certain provisions.

Tamara Sahl, Hampshire Road, questioned the hardship criteria regarding the lot. Mr. Stevens addressed the ten items that are unique about property that establish his hardship criteria. He reiterated it is a residential use not a business use and his family owns two abutting lots.

Dr. Paul asked if the applicant had to meet all five criteria. He emphasized that the applicant has not addressed the hardship criteria. Mr. Stevens noted that, according to the NH OSP handbook of what the state determines is hardship, he met the burden. His use of the property is reasonable and asked for the variance to be granted.

Comments from the Board

Mr. Johnson observed that the applicant made a good attempt, but perceived the application as more of the applicant's "want." He believed the ordinance was written to address the fact that townspeople did not want such an intense development of the land as proposed. Mr. Johnson thought the intensity of 5-unit housing project is over-saturation. Mr. Johnson complimented the applicant on the fine research he conducted in reference to his application.

Ms. Lerner applauded the effort of the applicant and his research stating that his effort to provide

affordable housing was noble. She was concerned that the lot is the smallest lot with the greatest intensity. Ms. Lerner added that there is traffic congestion at the existing shopping center and the housing unit would exacerbate the current situation.

Mr. Luff agreed with the over intense use of the site. Mr. Turchan commented that the intent of the zoning should be honored and not swayed by the verbiage of low-cost housing, affordable housing and elderly housing.

Mr. Turchan moved and Mr. Johnson seconded the motion to deny the application.

Michelle Peckham, 16 Kimberly Drive commented that the applicant had not addressed the five criteria. Mr. Simmons remarked that the Board addressed the criteria less formally, through discussions and comments. He said the Board does not, as a rule, take a roll-call vote.

Mr. Simmons took a poll of the board for the criteria standards:

Application does not meet spirit of application – The count was 5-0.

Application does not meet unnecessary hardship -- The count was 5-0.

Application adversely affects property value – The count was 4-0 with Mr. Luff abstaining.

A substantial justice criterion was not satisfactorily established by applicant – The count was 5-0.

Application would be contrary to the public interest – The count was 5-0.

The vote was unanimous (5-0). The application was denied.

Minutes from Prior Meetings

Review of February 18, 2004 Minutes

Mr. Luff moved and Mr. Turchan seconded the motion to accept minutes as amended.

The vote was unanimous (5-0).

Adjournment

Mr. Luff moved and Ms. Lerner seconded the motion to adjourn.

The vote was unanimous (5-0).

The meeting adjourned at 9:17 PM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator