



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

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, April 21, 2004 in the North Hampton Town Hall. Notice of the meeting was properly posted at the Library, Post Office and Old Town Offices/Town Clerk and the North Hampton Town Website on Monday, April 5, 2004 and published in the Hampton Union on Tuesday, April 6, 2004.

Attendance

Present: (1) John Anthony Simmons, Chairman; (2) Ted Turchan; (3) Susan Smith; (4) Michele Peckham, (5) John Woodworth seated for Richard Luff

Alternate(s) Present: Jennifer Lerner

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 7:06 PM.

Mr. Simmons introduced Susan Smith and Michele Peckham as the newest members of the ZBA. He commented that the notice of election of Board officers would be included in the Preliminary Matters for May 2004 meeting. Mr. Simmons seated Mr. Woodworth for Mr. Luff, declared a quorum and introduced the remaining 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.

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. 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 were interested in listening to the recording of the meeting procedures. Minutes of the meeting shall 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, would, 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.

Old Business

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 postponement of the March meeting.

Mr. Simmons noted that because the composition of the Board had changed recently, he asked Atty. Boldt to begin his presentation from the beginning of the case. Mr. Simmons requested that the record indicate that he alerted Atty. Boldt prior to the meeting of the Board member changes. Atty. Boldt on behalf of the applicant agreed to proceed under these circumstances. Mr. Boldt introduced himself and reviewed the history of the property, focusing on the 1995 sale of 55 acres to Turner Porter who developed the 55-acre parcel as part of the Boulders Subdivision. The subdivided parcel met all requirements. Atty. Boldt emphasized that during a previous Planning Board meeting the application was accepted as complete, but during the course of the meeting the question of the legality of the backlot was questioned which prompted their application to the Zoning Board of Adjustment.

Atty. Boldt referred to the 1980 deed that established the 67+-acre parcel as a legal lot of record. He stated that the tax map number remained the same even though the Boulders' parcel was assigned another tax map number. Thus, Atty. Boldt stated that this interpretation was validation that the applicant's property was a legal lot of record, because of the significance of the deed and the longevity of the tax map number assignment. Additionally, Atty. Boldt commented that if the Board did not vote favorably on his first argument, he requested a variance to re-establish the lot as a legal lot of record or grant a variance to the frontage requirement. He referenced the hardship standard by referring to Section 19.3 in Peter Loughlin's Land Use treatise. Mr. Boldt noted that our literature on hardship did not include "unique setting" as part of the hardship standard.

Atty. Boldt reminded the Board that the circa 1700's Fuller house is a historical building. For the applicant to meet the subdivision frontage requirement it would necessitate the removal of the house. Atty. Boldt suggested it was better to maintain the structure. This was the unique setting to which he referred to in the hardship clause. It was a structure worth saving and continued to be a benefit to the community.

Atty. Boldt referenced that the tax map for the property has remained the same since 1950. He addressed the Dowd's concern of the potential of a house located in their immediate back yard. Atty. Boldt stated that there is a tree barrier separating the properties that provided sufficient privacy screening. He stressed that the subdivision and backlot as proposed is a reasonable use of the land considering the availability and desirability of buildable land in North Hampton. Atty.

Boldt stressed that he believed that the Board could grant an ordinance to the date requirement because nowhere in the current ordinance was such a granting prohibited. Otherwise he asked that the Board grant a variance to the frontage if the legal lot of record is not granted. Atty. Boldt suggested that a variance for frontage should be tied only to backlots to avoid setting a precedent for future variance requests. Mr. Simmons commented that the Board would proceed on all three variance requests.

Board Comments

Mr. Woodworth asked for the total frontage dimensions. Atty. Boldt responded that total lot frontage was 875 feet, which is sufficient frontage for five (5) lots. Mr. Woodworth asked the applicant if he had any specific plans for the house. He noted that perhaps keeping the house should be listed as a condition of approval. The Board discussed establishing conditions, such a renewable easement on maintaining the home and barns in their current state.

Atty. Boldt argued that the ordinance had a loophole that allowed the applicant the opportunity to ask for the variance to grant relief from the 1992 lot of record requirement. He referenced again that the tax map remained and the 1980 deed exists, not a 1995 deed.

Mr. Simmons argued that the ordinance was clear by setting a date standard/cutoff. Mr. Turchan stated that during his tenure on the Planning Board, the consensus of the Board in 1991 was that the Planning Board did not want people to assemble lots and then subdivide them into multiple backlots per subdivision. Mr. Turchan noted that the Planning Board set the date requirement to avoid the proliferation of backlots. Atty. Boldt emphasized that his applicant was not doing that.

Public comments in support: None

Public comments in opposition

Atty. Stephen Ells represented the Dowds who are abutters to the east of the applicant. Atty. Ells referred to Special Town Counsel / Atty. Pelech's letter. Mr. Simmons noted that three of the Board members did not have copies of the letters that Mr. Ells referenced.

The meeting recessed 8:18 PM in order for Board members to read the letter.
The meeting reconvened at 8:33 PM.

Atty. Ells restated that his clients, the Dowds, had no objection to the subdivision, but were opposed to the backlot. The Dowds are concerned with the lack of frontage that would result in a driveway located alongside and close to their home. He referred to Special Town Counsel, Atty Pelech's opinion that the lot was not a legal lot of record. Atty. Ells remarked that the tax map number is not a relevant fact, it was a record-keeping function and had no relevance and did not prove that the current parcel was a deeded lot of record. He restated that the current parcel was not a legal lot of record and as such was not entitled to the backlot option. Atty. Ells commented that the Section 406.9 backlot date was not arbitrary date as Atty. Boldt claimed. Atty. Ells referenced the Planning Board history as recalled by Messrs. Turchan and Lagassa (previously) that the ordinance was constructed to prevent a property owner from maximizing the development of a property through the creation of multiple backlots. Atty. Ells emphasized that the frontage variance is a substantial

request. He believed that other creative re-engineering options are available to the applicant — it was not necessary to create five lots. Atty. Ells emphasized that the applicant had the legal right to create four lots. He further added that economic hardship was not supposed to be considered as part of the hardship criteria. Mr. Ells reviewed the five criteria from the perspective of the Dowds responding in opposition to the applicant's premise. He requested that his letter of January 20, 2004 be entered into the case record.

Mr. Simmons asked Atty. Ells that if the lot were reconfigured with 169+ ft frontage, would the Dowd's object? Atty. Ells remarked that he believed there would be no objection if the lot line would be more perpendicular. He stated that the prime objection would be the closeness of the driveway. Mr. Turchan asked if the driveway entered from the left of the homestead into the backlot, would there be an objection. Atty. Ells restated that his clients would be negatively impacted. Atty. Boldt challenged Atty. Ells' statement that the tax number is not irrelevant. Atty. Boldt re-stated that every ordinance could be granted relief since there is no specific prohibition for his variance request.

Mr. Simmons closed the public meeting at 9:11 PM.

Mr. Simmons commented that the Town Special Counsel and Atty. Ells agreed that the lot was not a lot of record in 1992. Ms. Peckham noted that in her opinion, the current lot was not a lot of record in 1992 as described by Section 406.9. Mr. Woodworth stated that the current parcel became a lot of record in 1995 after chunk of land was carved off.

(a) Mr. Simmons moved and Mr. Turchan seconded the motion to deny jurisdiction of interpreting the definitions of Zoning Ordinance Section 302 (concerning Lot of Record) and Section 406 (concerning Black Lot Subdivision) so as to find that the Applicant's existing Lot 131 is a "Lot of Record" prior to March 10, 1992.

The vote was 4 to 1 with Ms. Peckham opposed.

(b) Mr. Simmons moved and Ms. Smith seconded the motion to deny waiving the date requirement of Section 406.9.

The vote was 4 to 1 with Ms. Peckham opposed.

Mr. Simmons moved and Mr. Turchan second the motion to rescind (a) and (b) motions that preceded this motion.

The vote was unanimous (5-0).

Mr. Turchan noted that the lot was created after 1992. The applicant addressed the five criteria. The Board voted on the five criteria elements individually.

A) Interpretation

Mr. Simmons moved and Mr. Turchan seconded the motion to deny jurisdiction of interpreting the definitions of Zoning Ordinance Section 302 (concerning Lot of Record) and Section 406 (concerning Black Lot Subdivision) so as to find that the Applicant's existing Lot 131 is a "Lot of Record" prior to March 10, 1992.

The vote was 4 to 1 with Ms. Peckham opposed.

B) Date Requirement

The applicant addressed the five criteria.

The Board voted on the five criteria elements individually.

Mr. Simmons moved and Ms. Smith seconded the motion to deny waiving the date requirement of Section 406.9.

Vote was 4-1 with Mr. Turchan opposed.

C) Frontage Requirement

Board members expressed support in maintaining the status quo of the Fuller farmhouse and barns by attaching a condition to any variance granted that the farmhouse and barns would remain unchanged. Atty. Boldt remarked that it would be an acceptable condition that the farmhouse and barns would be maintained for Mr. Fuller's lifetime. He was hesitant to establish a more stringent requirement. The Board discussed and considered options, conditions and penalties. Ms. Smith noted that the hardship criteria was not fully proven and suggested that the applicant should reconfigure the lots and, in her opinion, a frontage variance should not be granted.

Mr. Woodworth asked what were the applicant's intentions. Sandra Woodworth indicated there were no plans to sell the lots. The intent was to have an approved plan to be exercised after Mr. Fuller's death.

The applicant addressed the five criteria.

The Board voted on the five criteria elements individually.

Mr. Woodworth moved and Mr. Turchan seconded the motion to grant the variance for the frontage plan with the condition that the farmhouse and barn remain unchanged for the length of Mr. Fuller's life or five years, whichever is later.

The vote was 4-1 with Ms. Smith opposed.

The meeting recessed at 10:00 PM.

The meeting reconvened at 10:14 PM.

New Business

2004:07 — Gary Stevens, 69 Lafayette Road, North Hampton, NH 03862 —requests a Variance to Article V, Section 506.3 B. and C. for relief to keep existing sign dimensions of 100 square feet and approximately 20 feet high so that a new, modern-looking sign can be constructed and installed. Property location: 69 Lafayette Road, I-B/R zone district, Tax Map #007-065-000.

Mr. Simmons recused.

Mr. Turchan was seated as Chairman.

Ms. Lerner was seated for Mr. Simmons.

Mr. Stevens limited his introduction and presentation and referred to his application submittal documentation. He remarked that the proposed sign is slightly larger and would internally lit. Ms. Peckham questioned the dimensions and how they were calculated. Mr. Stevens said the sign would be 100 sq. feet. Ms. Peckham requested the Building Inspector's interpretation of what constituted overall sign dimensions. Mr. Mabey, the Building Inspector, responded by stating that the ordinance was very vague but he considered measuring the signage inside the sign framework. Mr. Turchan commented that during his Planning Board tenure, the Board measured the sign fascia area and excluded the sign supports if they were reasonably sized structures. Mr. Stevens replied to Mr. Woodworth's question about the sign material composition. Mr. Stevens answered it would be composed of lexan, a plastic-type material. The current sign is 100 sq. ft. and the current ordinance allows 40 sq. feet. The Building Inspector noted that the sign is a legal non-conforming sign and if the applicant chose to repair the current sign, he would not be required to seek relief with a variance.

Ms. Lerner moved and Ms. Smith seconded the motion to approve the variance with the condition that the Building Inspector measure the sign fascia to verify it is 100 sq. feet as presented by applicant.

Mr. Turchan noted that Kelly Parrott submitted a letter to the Board in opposition to the sign because it was distracting and caused a major inconvenience to her. Mr. Turchan noted that the sign was grandfathered. Ms. Peckham said the ordinance was clear that if a sign is changed, it is no longer grandfathered. She added that grandfathering is not a reason for granting a variance. Mr. Woodworth questioned how hardship could be proven when the applicant currently had a 100 sq. ft. sign when the ordinance allowed a maximum 40 sq. ft. sign.

Public Comments in Support –None

Comments in Opposition – Letter from Ms. Parrott

The applicant addressed the five criteria.

The Board voted on the five criteria elements individually.

The vote was 3-2-0 with Ms. Peckham and Mr. Woodworth opposed.

Ms. Lerner retired from the Board.

Mr. Turchan retired from the Chair.

Mr. Simmons resumed the Chair.

Mr. Simmons moved and Mr. Turchan seconded the motion to waive the requirement that the Board not accept any new cases after 10:30 PM.

The vote was unanimous (5-0).

2004:08 — William G. Morin, 35 Lafayette Road, North Hampton, NH 03862 –requests a Variance to Article V, Section 506.3 E. for relief to allow a 40 sq. ft. wall sign which is larger than allowed signage. Property location: 35 Lafayette Road, I-B/R zone district, Tax Map #007-053-000.

William. Morin and his brother, Gerard Morin, presented their case from their submittal documentation. William Morin remarked that his sign request was consistent in size with the other businesses' signs at Lafayette Crossing. His business is located a great distance from Lafayette Road and the shopping area entrance and he needed the visibility of a slightly larger sign than the town ordinance allowed.

Mr. Turchan moved and Mr. Simmons seconded the motion to grant the variance for the 20 feet by 2 feet sign for Learning Express.

Mr. Turchan noted that the Board had traditionally approved signage in keeping with the standard set for the Lafayette Crossing and shared the same proportions as the other stores. For visibility the sign must be large enough. Mr. Morin noted that they couldn't have a sign on the pylon sign at the shopping center entrance.

The applicant addressed the five criteria.

The Board voted on the five criteria elements individually.

The vote was unanimous (5-0).

2004:09 — Edward C. Stead, 10 Cedar Road, North Hampton, NH 03862 –requests a Variance to Article IV, Section 406. for relief to side setback to construct a 50-foot by 50-foot aircraft hangar for private use. Property location: 10 Cedar Road, R-1 zone district, Tax Map #003-061-002.

Mr. Simmons moved and Mr. Turchan seconded the motion to waive the requirement that the Board not accept any new cases after 10:30 PM.

The vote was unanimous (5-0).

Mr. Stead presented his case. He explained the reason for minimizing the setback was his need for additional space to safely taxi his airplane into the proposed hangar. The variance request was primarily to address the issue of safety and secondarily to reduce noise by the positioning of the hangar at the proposed location.

The applicant addressed the five criteria.

The Board voted on the five criteria elements individually.

Ms. Smith moved and Mr. Turchan seconded the motion to approve the variance request for relief to the side setback to construct a 50 ft by 50 ft aircraft hangar for private use.

The vote was unanimous (5-0).

Minutes from Prior Meetings

Review of February 18, 2004 Minutes

Mr. Simmons moved and Ms. Peckham seconded the motion to continue review of the March 17, 2004 minutes and Rules of Procedure Update until the May 19, 2004 meeting.

The vote was unanimous (5-0).

Adjournment

Mr. Simmons moved and Mr. Turchan seconded the motion to adjourn at 11:25 PM

The vote was unanimous (5-0).

The meeting adjourned at 11:25 PM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator