



**REGULAR MEETING MINUTES**  
**TOWN OF NORTH HAMPTON**  
**ZONING BOARD OF ADJUSTMENT**  
**May 19, 2004**

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, May 19, 2004 in the Roberta T. Craig Room of the North Hampton Town Library. Notice of the meeting was properly posted at the (1) Library, (2) Post Office and (3) Old Town Offices/Town Clerk and the (4) North Hampton Town Website on Wednesday, May 5, 2004 and published in the Hampton Union on Friday, May 7, 2004.

## **Attendance**

**Present:** (1) John Anthony Simmons, Chairman; (2) Ted Turchan; (3) Richard Luff, (4) Susan Smith; and (5) Michele Peckham.

**Alternate(s) Present:** (1) Jennifer Lerner and (2) Sam Checovich

**Staff Present:** (1) Krystina Deren Arrain, Planning and Zoning Administrator/Recording Secretary

Mr. Simmons called the meeting to order at 7:10 PM.

## **Preliminary Matters; Procedure; Swearing in of Witnesses**

Mr. Simmons remarked that the standard Rules of Procedure were applicable to this meeting and noted that copies of the Rules of Procedure as well as other information is available at the literature table located in the rear of the meeting room. He swore in all persons present who would give testimony or present comment on matters to be considered by the Board.

## **Election of Officers**

**Ms. Smith moved and Ms. Peckham seconded the motion to nominate Mr. Simmons as Chairman.**

Ms. Smith noted that as a new member of the Board, she appreciated the help and support provided to her by Mr. Simmons and would like to see him continue as Chairman for the upcoming term.

Mr. Simmons closed the nominations.

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

Mr. Simmons accepted and commented on his recent loss noting that over the next year he would dedicate his efforts in service to the town in the memory of his son, Myles Joseph Simmons.

**Mr. Turchan moved and Mr. Simmons seconded the motion to nominate Ms. Peckham as Vice-Chair.**

Ms. Peckham expressed concern that with only two months of service on the Board, she was not certain she could successfully assume that position. After encouragement from other Board members, Ms. Peckham stated she would assume the Vice-Chair position in June 16, 2004 if Mr. Turchan would temporarily assume Vice-Chair for the May 19, 2004 meeting. Mr. Turchan agreed to Ms. Peckham's request.

Mr. Simmons closed the nominations.

*The vote was 4-0 with Ms. Peckham abstaining.*

## **Report of Agenda Notice**

Ms. Arrain reported that because of a typographical error on Case #2004:12, an amended public notice was reposted to the four (4) locations listed above on Monday, May 10, 2004 and re-published in the Tuesday, May 11, 2004 Hampton Union to address the address the street number correction. Mr. Simmons approved the posting with the exception of Case #2004:12.

Mr. Turchan addressed the audience stating that the New Hampshire Municipal Association [NHMA] was consulted regarding the amended agenda item and NHMA provided the opinion that our posting correction was appropriate.

## **New Business**

**2004:10** — **Priscilla McInnis, 4 Pond Path, North Hampton, NH 03862** – requests Variances from Article IV, Section 409.9 B.1. for relief from the 100-foot wetland buffer for a pool and a 20-foot by 30 foot garage which would be located within 50 feet of the wetland buffer. Property location: 4 Pond Path, R-2 zone district, Tax Map #005-089-004.

Mr. Simmons noted that the property is located in the Little Boar's Head Precinct. He read from the decision from LBH ZBA in which the application was denied. Paul McInnis, representing the applicant, asked the Chair for a procedural assessment of the next move. Mr. Simmons suggested that the application could be continued to a certain date if the Applicant so desired. He remarked that the applicant could not incur additional costs and this would leave more time if the applicant decided to appeal the LBH ZBA decision.

**Mr. Simmons moved and Ms. Peckham seconded the motion to continue the application until the July 21, 2004 meeting as requested by the applicant and the May 19, 2004 LBH ZBA decision letter was made a part of the record.**

*The vote was unanimous (5-0).*

**2004:11** — **Crown Properties and Home Sales, 203 Lafayette Road, North Hampton, NH 03862** – requests a Variance from Article IV, Section 405 as to permitted uses in the R-3 Zone. The specific use requested is the development of an eight (8) lot Adult Manufactured Housing Park adjacent to an existing

manufactured house park located in the R-3 Zone at 203 Lafayette Road. Property location: 203 Lafayette Road, I-B/R and R-3 zone district, Tax Map #016-012-000, 021-007-000, 017-088 thru 091-000.

Mr. Simmons recused.

Mr. Turchan was seated as Chairman.

Mr. Checovich was seated for Mr. Simmons.

Mr. Simmons noted that he would recuse for Case 2004:12 as well.

Atty. John Bosen, introduced himself to the Board in his capacity to represent the applicant. He introduced David Bowley, General Manager of Crown Properties and Home Sales LLC and John Chagnon, Ambit Engineering.

Atty. Bosen requested that the Acting Chairman recuse because his sitting on the Board during this case would be unfair to his client. He explained that both Mr. Turchan and his client had been involved in previous legal activity which Atty. Bosen felt cast doubt on Mr. Turchan's impartiality. Mr. Turchan challenged Atty. Bosen's statement. Atty. Bosen remarked that Mr. Turchan disliked his client, Joseph Roy. Mr. Turchan explained that he spent years on the Planning Board and the truth was that Mr. Roy developed a dislike of Mr. Turchan.

Mr. Turchan stated he never initiated any actions against Mr. Roy. Mr. Turchan added that during his tenure on the Planning Board he was diligent in his duties that included reviewing applications from Mr. Roy regarding his trailer park. Mr. Turchan added that it was not appropriate for the applicant to ask him to recuse because he had served the town appropriately on the Planning Board and Mr. Roy harbored ill will toward him unfoundedly. Atty. Bosen stated that his client believed Mr. Turchan could not fairly and impartially review this case. Ms. Peckham advised Mr. Turchan that it was his decision completely whether or not to recuse. Mr. Turchan stated that he is impartial toward the applicant. He asked the Board members their preference. The Board members agreed it was Mr. Turchan's decision and they would support it. Mr. Turchan decided to remain seated.

Atty. Bosen voiced his objection to Mr. Turchan's decision to remain seated.

Atty. Bosen stated that the applicant asked for an appeal of the Building Inspector's denial. He noted that housing restrictions would require residents of a minimum of 55 years or older with no residents under 18 years of age. Atty. Bosen stated that the Building Inspector rejected the building permit because a manufactured housing park was not authorized in the R-3 zone. He noted that there would not be a diminution of value because adult manufactured homes would be an improvement over the existing neighborhood structures. The proposed manufactured home would range in price between \$170,000. to \$200,000. Atty. Bosen noted that another adult manufactured home park was proposed for the adjoining lot.

Mr. Turchan commented that in cases 98:21 and 98:06, the applicant made the same request for the same lots and was denied by the ZBA. He questioned whether there was a substantial change in this application over the cases he cited. Atty. Bosen commented that the earlier application requested 11 lots, whereas the current request is for 8 lots. Additionally, the applicant included an age restriction on this application.

Ms. Peckham agreed that there was a substantial change on the current application. Mr. Turchan stated that he believed the age restriction requirement would have a zero impact on schools and other municipal services.

Mr. Turchan read into the record the difference between site-built and manufactured homes, referencing NH RSA 674:31 and 674:32. Manufactured homes are built on a permanent chassis and can be installed with or without a foundation. Mr. Turchan noted that the structures, as presented by the applicant, comply with the NH RSA manufactured home definition. He asked if there would be a new community-based septic system to accommodate the addition of the 8 proposed manufactured homes. Ms. Peckham asked if the 8 units would complete the development of the property. In response to Ms. Peckham, Atty. Bosen said it would. John Chagnon commented that there is adequate space to locate off-site septic coverage. Mr. Checovich asked about ownership rights. Atty. Bosen said it would probably be land-lease in which the manufactured home is deeded and land is lease-owned by applicant. Ms. Smith asked what would prevent owners from leasing to young families with children. Mr. Bowley responded that such an action would be prohibited by the resident lease agreement.

#### Public Comments

Mr. Simmons, from the audience, noted that since the 1998 denial was pre-Simplex, the applicant returned with a less stringent request that merited consideration because of the history of the case and the change in the hardship requirement. Mr. Bowley remarked that the need for elderly housing exists. On a weekly basis, he receives requests from elder citizens who are downsizing and don't want to leave the community. He added that lease charges would average. \$325.00/monthly. He added that manufactured homes are calculated with a life expectancy of 50-60 years.

**Ms. Peckham moved and Mr. Luff seconded the motion to approve the variance application on the condition that the applicant guarantee to the satisfaction of the Planning Board that one of the owners would be 55 or over and no occupants under the age of 18.**

**Findings of Fact Voting Record for Case #2003:11**

Find-ings of Facts		Not Contrary to Public Interest		Unnecessary Hardship Exists		Consistent w/Spirit of Ordinance		Substantial Justice Will be Done		Will Not Diminish Surrounding Properties		Vote	Vote	Vote
		Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	YES	NO	ABS
Board	Simmons [recused]													
	Turchan	X		X		X		X		X				X
	Luff	X		X		X		X		X		X		
	Smith	X		X		X		X		X		X		
	Peckham	X		X		X		X		X		X		
Alter-nates	Checovich	X			X	X		X		X		X		

*The vote was 4-0-1 with Mr. Luff abstaining.*

**2004:12** — Ken Linseman, 1070 Ocean Blvd., Hampton, NH 03842 —requests a Variance from (1) Article V, Section 506.2.D. to permit three (3) canopy signs where neither canopies with or without signage are not allowed; (2) Article V, Section 506.3. B & C. for two over-sized pylon signs where only one is allowed. Property location: 82 Lafayette Road, I-B/R zone district, Tax Map #007-124-000.

Mr. Simmons was recused.

Ms. Smith recused.

Mr. Turchan remained seated as Chairman.

Mr. Checovich remained seated for Mr. Simmons.

Ms. Lerner was seated for Ms. Smith.

Tim Sears, Real Estate Director for Rite Aid represented Ken Linseman. He requested wall identification signs in lieu of the canopy signs. Discussion arose whether the Board could hear the case on the wall signs because it was not noticed in the agenda/legal notice postings. Mr. Peter Simmons, donor/owner said the canopy signs were withdrawn. Mr. Turchan noted that the applicant must reapply for the wall signs. Mr. Linseman stated that he withdrew the canopy sign request, yet he wanted to proceed with the pylon signs request. Mr. Turchan said the Board would address only the pylon signs. Mr. Sears commented about driveway and directional signs and Mr. Turchan noted that usually direction and information signs are the purview of the Building Inspector and need not be considered by the Board. Mr. Peter Simmons explained the proposed Rite-Aid complex had signage requirements and for that reason they were appearing before the Board.

Mr. Sears stated that raising the pylon signs by 8 feet higher would make it safer. The sign would not interfere with the traffic lights and surrounding structures. Mr. Checovich asked if there are other larger signs in town. Mr. Peter Simmons responded that there are larger signs in town. Mr. Turchan favored taller signs to provide a clearer line of sight.

Ms. Peckham expressed concern that by consistently granting variances to the sign ordinance, the Board was re-writing the sign ordinance and that is really the purview of the Planning Board. She was concerned that the Board is setting a precedent. Board members reviewed the location of the pylon signs on the site plan for placement purposes and to review traffic flow and safety issues. Mr. Checovich suggested a smaller sized second pylon sign on Atlantic Avenue.

#### Public Comments

Gary Stevens, 228 Atlantic Avenue, asked for a review of the signs dimensions, locations and design features. Mr. Stevens questioned the need for a second sign. Susan Smith, as an audience member, remarked that for driving safety, a sign located on Atlantic Avenue would be of benefit to motorists heading eastbound on Atlantic Avenue because drivers needed adequate notice in order to turn left safely into the proposed complex.

#### Board Comments and Discussions

Mr. Luff indicated that the primary question is should there be more than one pylon sign. In response, Mr. Peter Simmons noted that there are currently two pylon signs on the property and they are grandfathered, but their current location is not desirable and their hope is to relocate them to safer more effective locations. Mr. Luff understood the value of two signs, but was not in agreement about the size of the signs. Ms. Peckham agreed the applicant was grandfathered for two signs. Mr. Checovich and Mr. Turchan supported two pylon signs. Ms. Lerner supported the two grandfathered pylon signs for continuity and safety.

**Ms. Lerner moved and Mr. Checovich seconded the motion to approve two pylon sign locations as shown on site plan where the Route 1 sign would not exceed 87 square feet with a height of 20 feet and 6 inches and the width of sign including sign posts would be 9 feet 5 inches and clearance from ground level to bottom of sign is 7 feet 7 inches as submitted by Exhibit A and B details. The Atlantic Avenue pylon sign is not to exceed 40 sq feet and 12 feet height with a ground level to bottom of sign of 6 feet 6 inches.**

**Findings of Fact Voting Record for Case #2004:12**

Find-ings of Facts		Not Contrary to Public Interest		Unneces-sary Hardship Exists		Consistent w/Spirit of Ordinance		Substan-tial Justice Will be Done		Will Not Diminish Surrounding Properties		Vote	Vote	Vote
		Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Abs
<b>Board</b>	<b>Simmons [recused]</b>													
	<b>Turchan</b>	X		X		X		X		X		X		
	<b>Luff</b>	X			X		X	X		X				X
	<b>Smith [recused]</b>													
	<b>Peckham</b>	X		X			X	X		X		X		
<b>Alter-nates</b>	<b>Checovich</b>	X		X		X		X		X		X		
	<b>Lermer</b>	X		X		X		X		X		X		

Mr. Luff voiced his concern about the Board's consistency of granting sign variances for over-sized signs.

*Vote was 4-0-1 with Mr. Luff abstaining.*

Ms. Lermer retired from the Board

Mr. Checovich retired from the Board.

Ms. Smith was reseated.

Mr. Turchan retired from the Chair.

Mr. Simmons was reseated and assumed the Chair.

## Minutes from Prior Meetings

### Review of March 17, 2004 Minutes

**Mr. Luff moved and Ms. Peckham seconded the motion to approve the minutes as presented.**

*The vote was 3-0-2 with Mr. Simmons and Ms. Smith abstaining.*

### Review of April 21, 2004 Minutes

**Mr. Simmons moved and Ms. Peckham seconded the motion to approve the minutes as amended.**

*The vote was unanimous (5-0).*

## **Rules of Procedure Updated**

Mr. Simmons commented that Section VII. (Miscellaneous) H. was unnecessary and difficult to enforce.

**Mr. Simmons moved and Mr. Turchan seconded the motion to remove Section VII. H.**

*The vote was unanimous (5-0).*

## **Adjournment**

**Mr. Turchan moved and Mr. Simmons seconded the motion to adjourn.**

*The vote was unanimous (5-0).*

The meeting adjourned at 10:25 PM

Respectfully submitted,

Krystina Deren Arrain,  
Recording Secretary/Planning & Zoning Administrator