



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

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, July 21, 2004 in the Conference Room of the North Hampton Town Offices.

Attendance

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

Alternate(s) Present: (1) Jennifer Lerner and (2) Ken Worrell.

Absent: Ted Turchan.

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.

Preliminary Matters; Procedure; Swearing in of Witnesses

Mr. Simmons noted that the variance standards [findings of fact] had changed because of a recent Supreme Court of New Hampshire ruling in the “Boccia vs. City of Portsmouth” case. As a result of the aforementioned case, the hardship standard now included options: (1) the Simplex standard that is characterized as a “use” hardship, and (2) the Boccia standard that is characterized as an “area” hardship.

Mr. Simmons remarked that the Rules of Procedure as well as other information was available on 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.

Mr. Simmons informed the Board that the Priscilla McInnis (Case 2004:10) had withdrawn her ZBA application that was open until July 2004. The Board accepted her withdrawal.

Report of Agenda Notice

Ms. Arrain, Recording Secretary, noted that 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 and published in the Hampton Union on Friday, July 9, 2004.

New Business

2004:17 — Simmons Trust, 54 Walnut Avenue, North Hampton, NH 03862 —requests Variances from (1) Article IV, Section 409.9.A.2. for relief from the 50-foot inland wetland buffer to construct a single-family home, (2) Article IV, Section 411 for relief from the requirement for one contiguous acre of non-wetland soils for a house site and, (3) Article IV, Section 409.8.A. for relief from the 75-foot setback from a wetland for the location of a septic system. Property location: 68 Lovering Road, R-3 zone district, Tax Map #019-042-000.

Mr. Simmons recused himself. Ms. Lerner was seated for Mr. Simmons.

Ms. Peckham was seated as Chair.

Ms. Smith recused herself and Mr. Worrell was seated for Ms. Smith.

Dick Wollmar, 111 Walnut Avenue, remarked that he believed Mr. Simmons should leave the room during the hearing of the case because he felt Mr. Simmons' presence could intimidate the seated Board members. Ms. Peckham indicated that the decision was Mr. Simmons'. Mr. Simmons chose to remain stating that he felt his presence in no way compromised the Board's ability to perform their duty.

Peter Simmons, 29 Atlantic Avenue, represented himself stating that his family had owned the property on Lovering Road since the early 1970's. His intent was to build a two-bedroom house on the property. Mr. Simmons stated that he intended to provide an easement along the Winnicut River to the Conservation Commission or to the town to protect the riverfront. He commented that West Environmental reviewed the property. Mr. Simmons remarked that he did not intend to fill-in the area or interfere with the wetland in any manner. Decades ago, part of the wetland area was upland. Mr. Simmons remarked that a drainage culvert on the property had been plugged up by beaver activity that caused a prolonged backup of water. He planned to clear the culvert and anticipated that over a period of time [years] the area would drain and return to its previous upland condition.

Peter Simmons addressed the five-variance standards. Mr. Worrell asked about septic system approval. Peter Simmons commented that he was confident he would receive septic approval. He intended to install an environmentally friendly septic system.

Public Comments

Ms. Peckham opened the meeting to the public for comments in opposition to the application.

Tim Harned, 66 Lovering Road was concerned about the elevations for the house and the septic system because the area is prone to flooding. Mr. Harned asked if the lot had been assessed and taxed as a buildable lot. He asked if Peter Simmons was trying to change the use of the land or how it was considered.

Dick Wollmar addressed the spirit of the ordinance and public interest. The Conservation Commission had a focus/plan to protect the Winnicut and Little Rivers. He further added that Aquarion wells are located just below the Simmons lot. Mr. Wollmar did not believe the lot was a good place to build a house. He remarked that years earlier, Peter Simmons agreed to provide a conservation easement along the Winnicut River. Peter Simmons told Mr. Wollmar that his son, John Anthony Simmons, would take care of the conservation easement. Mr. Wollmar added that when he approached Peter Simmons' son, John Anthony told him he knew nothing about an easement and the issue was abandoned.

Linda LaBreque, 70 Lovering Road, as an abutter, expressed concern regarding diminution of her property value because she had a four-bedroom home and Peter Simmons wanted to build a 2-bedroom home. Mrs. LaBreque remarked that the area is very wet and she expressed concern that water runoff could drain onto her property. She remarked that if Peter Simmons added fill for the purpose of elevating the footprint of the house, water runoff would drain to her home. Addressing her question, Peter Simmons remarked that he would do nothing to harm her property. He stated that he wanted to be a good neighbor.

Mr. Harned expressed his opinion that the lot is not an appropriate location for a house. He indicated that the property was not assessed as a building lot because it is appraised at \$15,100. He said Vision Appraisal did not consider the Simmons' lot a buildable lot.

Roger LaBreque, 70 Lovering Road, stated that he did not think the Simmons' property was a buildable lot because it floods in the spring. He restated the sentiments of his wife. In 1978 he remarked that Peter Simmons hauled gravel fill onto the lot. He stated that Peter Simmons did not have a fill permit and was ordered by the state to remove the gravel fill. He submitted copies of documents that supported his statements.

The meeting recessed at 8:16 PM.

The meeting reconvened at 8:29 PM.

Ms. Peckham stated they were not on point with the five standards. She thanked Mr. LaBreque for his submission. Peter Simmons addressed the comments made by Messrs. Harned, Wollmar and LaBreque. Peter Simmons stated that he had the right to develop/build on his property. He noted that the impact on the property would be minimal because he spends his winters in Florida as well as a lot of time on his boat in Portsmouth. Peter Simmons assured the Board that his intention was to build an upscale log cabin valued at \$300,000.

Peter Doyle, 245 Atlantic Avenue, remarked that he thought a 720 sq. ft. home was the least intrusive.

John Anthony Simmons, 54 Walnut Avenue, stated he had different recollections regarding Mr. Wollmar's statement. John Anthony recalled that he informed Mr. Wollmar that he was not well versed on conservation easements and suggested that Mr. Wollmar seek assistance from another attorney. John Anthony Simmons commented that memories and passage of time impede accurate and complete recall. Referring to Mr. LaBreque's statements, John Anthony Simmons noted that

perhaps the state sent letters as the result of a complaint. He questioned if there were a follow-up document that exonerated Peter Simmons if no violations were found. John Anthony Simmons noted that there should be a record available to validate that an actual violation occurred.

Mr. Wollmar asked if Peter Simmons' well met the required setback. Peter Simmons stated that he met the well setback requirement. Peter Simmons left to retrieve the letter from West Environmental for distribution to the Board.

Meeting recessed at 9:07 PM

Meeting reconvened at 9:15 PM

During the recess Peter Simmons distributed the aforementioned letter from West Environmental that provided information on the wetland delineation.

Variance Request for Section 409.9.2

The Board voted on the five standards.

Find-ings of Facts		Not Contrary to Public Interest		Unneces-sary 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	Lermer seated for Simmons	X		X		X		X		X		X		
	Woodworth seated for Turchan	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Worrell seated for Smith	X			X		X		X	X			X	
	Peckham													X

Ms. Lermer moved and Mr. Woodworth seconded the motion to approve the variance for Section 409.9.2. including the condition that the inland buffer setback shall not be less than 25 feet.

The vote was 3-1-1 with Mr. Worrell opposed and Ms. Peckham abstaining.

Variance Request for Section 411.

The Board voted on the five standards.

Find-ings of Facts		Not Contrary to Public Interest		Unneces-sary 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	Lermer seated for Simmons	X		X		X		X		X		X		
	Woodwor th seated for Turchan	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Worrell seated for Smith		X		X		X		X	X			X	
	Peckham													X

Mr. Luff moved and Mr. Woodworth seconded the motion to approve a variance for Section 411 where the non-wetland soils for the site equals .51 acres and allowed construction of a house of 720 sq. ft. or less.

The vote was 3-1-1 with Mr. Worrell opposed and Ms. Peckham abstaining.

Variance Request for Section 409.8 A

The Board voted on the five standards.

Find-ings of Facts		Not Contrary to Public Interest		Unneces-sary 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	Lermer seated for Simmons	X		X		X		X		X		X		
	Woodworth seated for Turchan	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Worrell seated for Smith		X		X		X		X		X		X	
	Peckham													X

Ms. Lermer moved and Mr. Woodworth seconded the motion to approve a variance for Section 409.8.A for relief from the 75-foot setback from a wetland for the location of a septic system that shall not be less than 30 feet from the wetland buffer.

The vote was 3-1-1 with Mr. Worrell opposed and Ms. Peckham abstaining.

The meeting recessed at 9:32 PM.

The meeting reconvened at 9:40 PM.

Ms. Lermer retired from the Board.

Ms. Peckham retired from the Chair.

Mr. Simmons resumed the Chair.

Mr. Worrell retired from the Board.

Ms. Smith resumed her seat.

2004:18 — Gary Stevens, 69 Lafayette Road, North Hampton, NH 03862 –requests a Variance from Article IV, Section 406.3.A. for relief from the minimum 100,000 square foot lot requirement for a duplex with a 60,000 square feet requirement of non-wetland area. The proposed duplex would be constructed on a lot comprising 34,800 square feet. Property location: 247 Atlantic Avenue, R-2 zone district, Tax Map #007-128-000.

Gary Stevens, representing E. Dean Stevens, stated that he requested relief from the minimum 100,000 sq. ft. lot to construct a duplex on the site. He explained that each unit would be approximately 720 sq. ft., built on a slab and include a garage. He explained that he was denied a variance request to construct a 5-unit housing structure and was encouraged to build a duplex that is allowed in the zone. Test pits were dug in the front portion of the lot. It was a grandfathered lot with no wetlands. He submitted a wetland delineation report from NH Soil Consultants and another letter stating that the lot could support a duplex. The proposed duplex would meet all setback requirements.

Mr. Stevens commented that the duplex was a less intensive use and his family wanted to maintain ownership of the property. He remarked that the family has owned for the last forty years. Mr. Stevens observed that if they built a one-family home, they would have to sell the property. From the February 2004 case, the appraiser's report stated that a 5-unit housing structure would not diminish the value of surrounding properties. He noted that Atlantic Avenue is a high-traffic area of 6,000 autos daily. The duplex would not significantly increase traffic congestion. Mr. Stevens strongly stressed the family's desire to maintain ownership of the property.

Mr. Simmons remarked that notice of the meeting reflected relief form 406.3.A. He added that there was an administrative error, but at the time the application was made that citation was the effective ordinance. That section has now become 406.4.A in the 2004 Zoning Ordinance Book for the benefit of this hearing.

Mr. Stevens addressed the five standards and applied the Boccia standard for an area variance.

Mr. Stevens compared his proposed duplex to a similar structure [condo] at 94B Atlantic Avenue that was located on .52 acres whereas his lot is .80 acres. His proposed structure would be 3,000 sq. ft. with garages accounting for 1,000 sq. feet. Actual living space would be 1,000 sq. ft. per unit with adequate spaces for parking. Mr. Stevens stressed that his hardship is defined by his family's desire to maintain ownership of the property. He observed that it would be difficult to continue property ownership unless they could convert it into rental property. Mr. Stevens reinforced his family's position that selling the property would be out of the question.

Public Comments

Mr. Simmons opened the meeting to the public for comments in support of the application. No comments in support were voiced.

Mr. Simmons opened the meeting to the public for comments in opposition to the application.

Peter Doyle, 245 Atlantic Avenue, an abutter, was opposed because the proposed septic system was too close to the road. Since the road was impermeable, he believed water runoff from the road would drain onto the septic area. Mr. Doyle believed that the land would be overused for a two-family structure. He said the buildable land on the lot was one-third of the requirement for a duplex. He suggested that the applicant should purchase sufficient land from Dr. Paul, an abutter, to bring the lot into conformance. Mr. Doyle stated that the variance standards are not met by the applicant's variance request. He remarked that he would not be opposed to a single-family home on the lot.

Mr. Stevens requested tabling his application until the September 2004 meeting and requested the Board's inputs. Mr. Simmons observed that parking, snow removal, orientation and design issues needed consideration. He wanted to contact NHMA regarding the first prong of Boccia to determine what constituted special conditions in relation to the lot size.

Mr. Simmons moved and Mr. Luff seconded the motion to approve the applicant's request to continue the meeting until September 15, 2004 meeting under "Old Business."
The vote was unanimous. 5-0.

Minutes from Prior Meeting

Review of June 16, 2004 Minutes

Mr. Simmons moved and Mr. Luff seconded the motion to approve the minutes as edited by Mr. Simmons.
The vote was 4-0-1 with Ms. Smith abstaining.

Rules of Procedure Updated

Ms. Smith moved and Mr. Simmons seconded the motion to change the ZBA meeting location to the Town Offices Conference Room.
The vote was unanimous (5-0).

Mr. Simmons requested that Ms. Arrain include minutes in an application packet if there had been previous ZBA action on the lot. He indicated that historical information was important on assisting the Board when considering a new application that had a previous ZBA history. Ms. Arrain indicated that since ZBA minutes are accessible online from the town's website, she would inform applicant to provide minutes, when applicable.

Adjournment

Mr. Simmons moved and Ms. Smith seconded the motion to adjourn.
The vote was unanimous (5-0) to adjourn.

The meeting adjourned at 10:59 PM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator