



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
September 15, 2004

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The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, September 15, 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) Ted Turchan.

Alternate(s) Present: (1) John Woodworth and (2) Sam Checovich.

Absent: (1) Jennifer Lerner, (2) 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 7:11 PM.

Preliminary Matters; Procedure; Swearing in of Witnesses: Recording Secretary Report

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 provide testimony or present comment on matters to be considered by the Board. 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, September 3, 2004.

Review of July 21, 2004 Minutes

Mr. Woodworth was seated for Mr. Turchan.

Ms. Smith moved and Ms. Peckham seconded the motion to accept the minutes as submitted. The vote was 4-0 with Mr. Simmons abstaining.

Old Business

2004:24 — Russell W. Jeppesen, P.O. Box 990, North Hampton, NH 03862 - requests a Variance from Article IV, Section 409.9.B.1. for relief from the wetland buffer requirement to construct a commercial building that would encroach into the wetland buffer. Property location: *Property location: 62 Lafayette Road, I-B/R zone district, Tax Map #007-120-000. This meeting was*

postponed from August 18, 2004.

Mr. Simmons read the September 10, 2004 letter from Atty. Michael J. Donahue, legal counsel for the applicant, in which the applicant withdrew his application.

Ms. Peckham moved and Mr. Luff seconded the motion to accept the withdrawal without prejudice.

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

2004:18 — Gary Stevens, 69 Lafayette Road, North Hampton, NH 03862 –requests a Variance from Article IV, Section 406.4.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. This meeting was postponed from July 21, 2004.*

Mr. Stevens briefly reviewed the case from the July 21, 2004 meeting noting that the Board requested additional information, specifically:

1. What was the specific location of the proposed duplex,
2. What was the parking configuration,
3. Where was the snow storage area,
4. How many bedrooms would the duplex contain,
5. What guidance could the NHMA provide regarding the Boccia analysis.

Mr. Stevens used an overhead projector to display the lot location. He distributed photos of the location from multiple angles and views in the surrounding area.

Mr. Simmons moved and Ms. Peckham seconded the motion to add “Exhibits A, B and C” into the record.

The vote was unanimous (5-0).

Mr. Stevens displayed a new 2-bedroom per unit design identifying parking area, turnarounds, snow storage and the possible location of a septic system area. The Building Inspector indicated that a driveway within the front setback is allowed in a residential area. Mr. Stevens remarked that his intent of building a 2-bedroom per unit duplex was to attract mature couples or couples without children. He was concerned about children’s safety in such a high vehicular volume area. Mr. Stevens also noted that children living in the duplex would increase the school population and cost the town additional funds.

Mr. Simmons moved and Ms. Peckham seconded the motion to add “Exhibit D” into the record.

The vote was unanimous (5-0).

Mr. Stevens stated that the lot was a grandfathered [legal non-conforming] lot measuring 34,800 sq. feet. The lot did not meet the 100,000 square foot ordinance requirement for the construction of a duplex. Mr. Stevens noted that it has been a lot of record over 40 years and in his family’s ownership

during that time. At 174.71 feet, the lot almost met the frontage requirement. Mr. Stevens commented that he believed it was an unsafe environment for children because approximately 6,000 cars travel by the location daily. He noted that NH Soil Consultants' soil test confirmed that the lot could support a 10-bedroom structure because the soils on the lot had sufficient septic capacity. He remarked that no wetlands are located on lot. Mr. Stevens pointed out that a number of multi-family structures are located within the immediate vicinity. He further added that the lot met all setback requirements.

Mr. Stevens stated that he sought an area variance because there was no option available to them to bring the lot into conformance. The only possible option would be to purchase additional land from his neighbors. He noted that land acquisition would be very expensive and he was uncertain if they would sell it. Mr. Stevens remarked that if he were required to purchase land in order to meet the duplex lot requirement, such a requirement would create any undue burden on him. Mr. Stevens emphasized that the proposed duplex could be maintained as rental income and could remain in the family's possession. The benefit sought from Mr. Stevens was rental income.

Mr. Stevens stated his opinion that when the town allowed duplex structures in all zones, that approval signaled to him that the town approved of duplexes. He stated that it was his opinion that the 100,000 square foot lot requirement was out of concern for aquifer protection. Mr. Stevens was of the opinion that the town did not want to discourage duplex development, but that the town did not want to compromise the aquifer.

Mr. Simmons moved and Ms. Peckham seconded the motion to add "Exhibit E" into the record.

The vote was unanimous (5-0).

Mr. Simmons opened the meeting to public comments at 8:08 PM.

Peter Doyle, 245 Atlantic Avenue. Mr. Doyle stated that he and Mr. Stevens had discussed the proposed duplex at length. Mr. Doyle stated that Mr. Stevens had been very cooperative. Mr. Doyle remarked that he disagreed with the 5-unit housing appraisal that Mr. Stevens commissioned. Mr. Doyle commented that in his opinion, his property would not be negatively affected and he would not object to Mr. Stevens' duplex proposal.

Mr. Simmons moved and Ms. Peckham seconded the motion to add "Exhibit F" into the record.

The vote was unanimous (5-0).

Peter Simmons, 29 Ocean Boulevard, was sworn in. He said that although duplexes were allowed as stipulated, he emphasized that there was ample reason for the 100,000 square foot lot requirement. Peter Simmons stated that the applicant was creating his own hardship by his desire to build a duplex and maintain ownership rather than build a single-family home and sell the land. Peter Simmons questioned if the structure would later be enlarged. Mr. Stevens stated that he would accept a condition that prohibited the structure from being enlarged. Mr. Doyle stated he would prefer a one-story structure.

Mr. Simmons closed the public meeting at 8:19 PM.

Board comments

Mr. Simmons agreed with the applicant that his land was dry but noted that the minimum requirement of dry upland was 60,000 sq ft and the Stevens' lot was only half that amount. Ms. Peckham was in agreement with Mr. Simmons statement. Mr. Simmons commented that the applicant had made a good effort but was concerned about the "spirit of the ordinance." Mr. Luff believed that the applicant has made a significant improvement and addressed the concerns of abutters. Ms. Smith was concerned about hardship, noting that a single family home could be built on the site and rented. Mr. Woodworth was concerned about the small lot size and the financial/business reasons for building a duplex.

Mr. Stevens quoted from page 16 of the NH-OSP publication "The Board of Adjustment in NH – dated October 2002" regarding Item #5: "The Use Must Not Be Contrary To The Spirit And Intent Of The Ordinance." He referred to the comdex [condo-ized duplex] located at 94 Atlantic Avenue that was built on ½ acre that equated to approximately 22,000 square feet. He noted that his lot was half as much larger at 34,800 square feet.

The Board voted on the five criteria elements below for Case #2004:18: Gary Stevens/ 247 Atlantic Avenue:

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	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		
	Smith		X		X		X		X	X			X	
	Peckham		X	X			X		X	X			X	

Mr. Luff moved to grant the area variance. The motion was not seconded. The motion failed.

Ms. Peckham moved and Ms. Smith seconded the motion to deny the variance request.
The vote was 4-1 with Mr. Luff opposed.

Mr. Simmons recessed the meeting at 8:47 PM.

Mr. Simmons reconvened the meeting at 8:53 PM.

Mr. Woodworth retired from the Board.
Mr. Turchan was re-seated.

New Business

2004:25 — **Aquarion Engineering Services, 222 St. John St., Ste 314, Portland, ME 04102** - requests a Special Exception from Article IV, Section 405.2 for relocation of the operations building to a newly constructed building located on the same site. *North Hampton Property location: 7 Mill Road, R-1 zone district, Tax Map #003-004-000 and 003-048-000. Hampton Property locations: Map/Lot #57/5, 57/7, 58/1, 58/2 and 72/14.*

In attendance:

Mr. Stephen Bradstreet, Aquarion Engineering Services,
Ms. Jamie Madore, Aquarion Engineering Services,
Frank Giordano, Aquarion Water Company.

Mr. Bradstreet, representing the applicant, stated that Aquarion wanted to bring their Mill Road facility into compliance by relocating their operation buildings. The current complex is located within the 400 ft. sanitary protection well radius area. He commented that a maintenance building, vehicle storage area and a septic storage area would be removed as well as an office/administrative building. They wanted to combine all services into the new structure. Aquarion wanted to build a 4,000 sq ft. building with parking for 18 employees with no septic system on site. Mr. Bradstreet stated their plan was to pump septic through a pipe that was connected to the Hampton sewer system. He stated that the proposed Aquarion plan would create a more efficient system and would bring the company into state water protection compliance. All buildings, tanks and pavement would be removed and the current area would be re-vegetated. A small storage building for dry storage items would remain at its present site. Mr. Bradstreet noted that removing the fuel oil storage facility from the well protection area was a best management practice.

Frank Giordano, Aquarion Supervisor, was sworn in and said that the company was very concerned about the non-compliance and by relocating buildings, vehicles and pavement within the well radii, they would protect the well site. Mr. Bradstreet stated that relocating the above items also removes them from the wetlands buffer area.

George Paul, 4 Mill Road, North Hampton, an abutter stated that a similar proposal was denied approximately six (6) years ago. Mr. Simmons commented that the applicant would have to submit a site plan review application to the Planning Board.

Mr. Simmons recessed the meeting at 9:14 PM.
Mr. Simmons reconvened the meeting at 9:24 PM.

Paul Fitzgerald, 6 Toppan Lane, Hampton Falls, a property abutter asked to view the property plan.

Mr. Simmons explained that the applicant had requested a Special Exception and read from Article

IV, Section 405 Permitted Use Table noting that the application would be held to the following requirements:

1. Proposed application must not diminish the value of the surrounding properties.
2. Proposed application shall not unreasonably adversely the public interest, health or safety.
3. Planning Board shall independently review the case if site plan review requirements apply.

Mr. Bradstreet stated that the proposed building had a slightly larger footprint than the existing structure with a lesser, paved area. Mr. Turchan suggested that the proposed building should be located at least 350 foot from Mill Road and the parking lot should be located east of the building.

Ms. Peckham moved and Mr. Luff seconded the motion to approve the Special Exception with the condition that (1) the building set back as far as reasonably possible and parking lot is located behind the building and in an easterly direction, (2) the project should be submitted to the Planning Board and the septic issues should be addressed.

The vote was unanimous (5-0).

Mr. Turchan moved and Ms. Peckham seconded the motion that the Board suspend the 10:30 PM rule for all remaining cases.

The vote was unanimous (5-0).

2004:26 — Ken Linseman, 1070 Ocean Boulevard, Hampton, NH 03842 - requests a Variance from Article IV, Section 406 for relief from the 35-foot side setback requirement to allow a side setback of 12 feet. *Property location: 72 Lafayette Road, I-B/R zone district, Tax Map #007-124-00.*

Mr. Simmons recused himself.

Ms. Peckham assumed the Chair.

Mr. Checovich was seated for Mr. Simmons.

Ms. Smith recused herself.

Mr. Woodworth was seated for Ms. Smith.

Mr. Linseman was given permission by Jabez Trust/Peter Simmons to submit this application.

In attendance:

Atty. Malcolm McNeil

John Schmitz

Ken Linseman

Atty. McNeil, representing the applicant, noted that the lot was a legal non-conforming [grandfathered] lot and they requested an area variance for dimensional requirements, referencing the Boccia standards. He added that the lot had two frontage requirements because of its location at the crossroads of a major intersection: Lafayette Road (Rte. 1) and Atlantic Avenue (Rte. 111). Atty McNeil added that the current buildings on site are non-conforming to the existing setback requirements. He noted that the proposed structure would be a typical Rite-Aid Pharmacy with a drive-thru. Atty. McNeil noted the unique lot design as not being symmetrical, commenting that the

proposed non-conformity is greater than the current non-conformity. He added that the property owner would grant an easement to the applicant that would enhance the separation from the adjoining property and would be consistent with the current setback non-conformity. Atty. McNeil remarked that the easement was dependent upon NH-DOT's driveway approval. He stated that the proposed building could not be moved forward to get it out of the setback because it would eliminate the required parking spaces. Thus, he added, there was limited flexibility for building location and the setback requirement.

Atty. McNeil addressed the five standards.

Board comments:

Ms. Peckham suggested reducing the building size, removing the drive-thru window and relocating the building. Atty. McNeil stated that a drive-thru window was critical to pharmacies and banks. The building size was an optimal design for customer access to the entrance. Ms. Peckham didn't think the property was large enough for the proposed building. Atty. McNeil commented that Rite-Aid was interested in this site because it wanted to build an enhanced/upgraded facility from its present facility that was located across the intersection at the Village Shopping Center.

Gary Stevens, 69 Lafayette Road, stated that the current Rite-Aid building was 14,400 sq. feet and was located in the Village Shopping Center and was one of the largest Rite-Aids in the state. Mr. Schmitz said that Rite-Aid was in expansion and enhancement mode and had selected the 14,600 sq. foot plan size as their selected design.

Ms. Peckham swore in the remaining individuals who would provide testimony. Ms. Peckham and Mr. Checovich suggested that the northeast corner of the building that infringes on the side setback could be loped off.

Bill Sylvester, 9 Lafayette Road, stated that the current site is an eyesore and thought the Rite-Aid project would be a great improvement.

Mr. Steven, whose family owns the Village Shopping Center, stated that Rite-Aid had been operating without a drive-thru for many years at its current site. He thought the applicant could re-design the footprint thus allowing the building to fit the lot requirements. Mr. Stevens added that he believed the Board should not be concerned about what Rite-Aid corporate wanted. He added that with the increased pavement on the lot, stormwater would probably run onto his land across the intersection. Mr. Stevens commented that the Boccia [area] standard had not been achieved because the building could be smaller.

Atty. McNeil said he understood Mr. Stevens' concern because he would be losing a tenant. Atty. McNeil noted that any pavement issues would be a Planning Board matter. He added that concerning the value of the property on the site, the maximization of the lot usage was a key factor.

Peter Simmons, 29 Ocean Blvd, owner of the property and surrounding lots stated that there were no abutters that had any issues regarding this application. Peter Simmons remarked that Gary Stevens did not own the Village Center and, as such, did not have standing as an abutter. Peter Simmons

reviewed the project and noted it is a benefit to the town as an improvement over existing conditions. He had worked with the developer, Mr. Linseman, to come up with the best possible scenario and he noted that the plan that was presented was the best solution. He said that what was proposed was in the best interest of all parties.

Mr. Stevens responded that said he does own 1/6 of the Village Shopping Center corporation, stated that he had standing when he made his statements. Peter Simmons submitted a map that delineated the abutting on the west side of said lot. The map was marked as "Exhibit D" and placed into the permanent record.

Ms. Peckham reiterated her concern about the building size and was in favor of reducing the square footage. Mr. Woodworth stated there was an area hardship because the property had two frontage requirements. Mr. Linseman emphasized the necessity of easy parking and easy drive-thru access.

The Board voted on the five criteria elements below for Case #2004:26: Ken Linseman/ RE: 72 Lafayette Road

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
		Y E S	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	ABS
Board	Checovich seated for Simmons	X		X		X		X		X		X		
	Woodworth seated for Smith	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Peckham	X			X	X		X		X			X	

Mr. Luff moved and Mr. Checovich seconded the motion to grant the variance as presented. The vote was 4-1 with Ms. Peckham opposed.

Ms. Peckham recessed meeting at 11:01 PM.

Ms. Peckham reconvened the meeting at 11:08 PM.

Ms. Peckham recused herself.

Mr. Checovich was seated for Ms. Peckham

Mr. Woodworth was seated for Ms. Smith.

Mr. Simmons was reseated as Chairman.

2004:27 — 9 Lafayette Realty, LLC, P.O. Box 695, North Hampton, NH 03862 - requests a Variance from Article V, Section 506.3 B. & C. for relief from (a) the 40-square foot sign requirement to allow a 165-square foot sign and (b) relief from the 12 feet height requirement to allow a 18-foot nine-inch sign height. *Property location: 9 Lafayette Road, I-B/R zone district, Tax Map #003-080-000.*

In attendance:

Atty. Bernard Pelech, Wholey & Pelech, Portsmouth, NH

Bill Sylvester, Principal, 9 Lafayette LLC

Atty. Pelech, representing the applicant, stated that they asked for a height and size variance. He noted that the zoning ordinance did not consider multi-tenants adequately and sufficiently. Atty. Pelech noted that many of the tenant locations were not easily visible from Lafayette Road because of the design of the development. He commented that there are many multi-tenant sites in North Hampton with many small reader boards that create potential safety hazards. Mr. Pelech presented three design options for the sign. The Board agreed that the panels within the sign area would be 6' wide and 18" high that equaled 72 square feet for the sign printable area.

Atty. Pelech addressed the variance standards.

The Board voted on the five criteria elements below for Case #2004:27: 9 Lafayette Realty LLC/ RE: 9 Lafayette Road

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
		Y E S	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	ABS
Board	Simmons	X		X		X		X		X		X		
	Woodworth seated for Smith	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Checovich seated for Peckham	X		X		X		X		X		X		

Mr. Simmons moved and Mr. Luff seconded the motion to approve a sign for 72 square feet of printable area where 40 square feet was allowed.

The vote was unanimous (5-0).

Mr. Simmons moved and Mr. Turchan seconded the motion to approve a sign height of 18 feet.

The vote was unanimous (5-0)

Mr. Checovich retired from the Board.

Ms. Peckham was reelected as Vice-Chairman.

2004:28 — Peter Meyer, 50 Acadia Avenue #5, Hampton, NH 03842 - requests Variances from (1) Article IV, Section 406 for relief from (a) the 50-foot front setback requirement for an ADA-accessible ramp, (b) Article IV, Section 406.8 for relief from the landscape buffer requirement, and (c) Article V, Section 409.9.B.1. for relief from the 50-foot wetland buffer for the encroachment of a dumpster pad. *Property location: 61 Lafayette Road, I-B/R zone district, Tax Map #007-063-000.*

In attendance:

Peter Meyer, Principal

Patricia Couture, Principal

Atty. Christopher Boldt; Donahue, Tucker & Ciandella, Exeter, NH

Atty. Christopher Boldt submitted “Exhibits A-D” for a retail shop with office space. Atty. Boldt reviewed the details of the three variance requests.

Atty. Boldt addressed the five criteria applying the Boccia area hardship standard.

Mr. Simmons moved and Ms. Peckham seconded the motion to accept “Exhibits A-D” into the record.

The vote was unanimous (5-0).

The Board voted on the five criteria elements below for Case #2004:28: Peter Meyer/ RE: 61 Lafayette Road which considered (1) the 50-foot front setback requirement for an ADA-accessible ramp, (2) Article IV, Section 406.8 for relief from the landscape buffer requirement, and (3) Article V, Section 409.9.B.1. for relief from the 50-foot wetland buffer for the encroachment of a dumpster pad. The vote on the criteria was the same for each variance as is noted in the chart below:

Findings 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	X		X		X		X		X		X		
	Woodworth seated for Smith	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Peckham	X		X		X		X		X		X		

Mr. Turchan moved and Ms. Peckham seconded the motion to grant the variance for the landscape buffer but noted that the applicant had a vested right.

The vote was 4-1 with Mr. Simmons objecting to a property owner having to get relief for a grandfathered vested right.

Mr. Simmons moved and Ms. Peckham seconded the motion to grant the variance to the 50-foot front setback for an ADA ramp.

The vote was unanimous (5-0).

Mr. Simmons moved and Mr. Luff seconded the motion to grant the variance to the wetland buffer.

The vote was unanimous (5-0).

Mr. Woodworth retired from the Board.

Minutes from Prior Meeting

Review of August 18, 2004 Minutes

Mr. Simmons moved and Mr. Turchan seconded the motion to accept the minutes as submitted.

The vote was unanimous (4-0).

Rules of Procedure Updated

Mr. Simmons asked Ms. Peckham to research the process and procedure on recording Board decisions at the Registry of Deeds.

Mr. Simmons moved and Ms. Peckham seconded the motion to accept the new application form that included applicants submitting written responses to the variance standards in writing when submitting an application for consideration.

The vote was unanimous (4-0).

Adjournment

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

The vote was unanimous (4-0).

The meeting adjourned at 12:34 AM.

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator