



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
January 19, 2005

Page 1 of 9

The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, January 19, 2005 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; (4) Ted Turchan; and (5) Jennifer Lerner seated for Susan Smith.

Alternate(s) Present: (1) John Woodworth and (2) Ken Worrell.

Absent: (1) Sam Checovich

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 7:08 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, January 7, 2005.

Mr. Simmons introduced the members of the Board to the audience. He stated that he will recuse himself on two cases: Case 2005:01 in which Ken Worrell will be seated for him; and on Case 2005:02 in which John Woodworth will be seated for him.

Review of November 17, 2005 Minutes

Kelly Parrott, 246 Atlantic Avenue, requested that draft minutes be distributed over the web. A discussion ensued of the technical difficulties involved in meeting her request. Ms. Arrain noted that it has not been the policy of either the Zoning Board of Adjustment or the Planning Board to post draft minutes on the web. She further noted that draft minutes are available to the public after 144 hours, upon request.

J. Lerner moved and TT seconded the motion to accept the minutes as submitted.

Vote was 4-0 with JAS abstaining.

Old Business

2004:25 — **Rehearing for 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.*

Mr. Simmons read the January 3, 2005 letter in which Aquarion requested a tabling of their application. He noted that the question of a withdrawal of their application was unclear at the moment.

Mr. Turchan moved and Mr. Luff seconded the motion to approve the applicant's request to table their application until the February 16, 2005 meeting.
The vote was unanimous (5-0).

2004:32 — **Sally Ann Marcotte, P.O. Box 447, North Hampton, NH 03862**, requests a Variance from (1) Article IV, Section 406 for relief from the 30-foot rear setback requirement for a building renovation and relocation to allow a side setback of 9 feet and (2) Article IV, Section 406.2 for relief from lot merger requirement. *Property location: 44 Ocean Boulevard, R-2 zone district, Tax Map #001-118-000.* This meeting is a postponement from the November 17, 2004 session.

Attorney Bernie Pelech represented the applicant and remarked that the applicant's plan included disassembling, moving and modifying an existing two-story building and adding a garage to the structure. He noted that the reason for the location of garage was to allow her neighbors, the Kinsers' and Rockwells' a view easement that she would grant. Atty. Pelech noted that the Little Boar's Head [LBH] ZBA had granted a variance. He remarked that LBH does not have a merger clause. Atty. Pelech referenced Section 406.2 as a merger clause, of a sort. He stated there are two separate lots and have been separate lots since 1939 and in the Marcotte family's ownership for the last 50 years.

Atty. Pelech reviewed the five conditions of an area variance. There was extensive discussion among the Board, Atty. Pelech and the Building Inspector regarding the legality of Section 406.2 that automatically merges lots in common ownership; whereas voluntary lot mergers could only be accomplished through the Planning Board action.

Chuck Gordon, 10 Sea Road, of the LBH ZBA stated that Section 406.2 was probably subject to strong judicial challenge, but since the ordinance existed, the Board must address it. Mr. Simmons read George Kinser's handwritten letter of support into the record.

Mr. Simmons opened the meeting to public comments.

Mr. Simmons closed the public meeting without comments made.

Section 406.2

The Board voted on the five criteria elements below for Case #2004:32: Sally Ann Marcotte/44 Ocean Boulevard.

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			
Board	Simmons	X		X		X		X		X		X		
	Peckham	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Lermer seated for Smith	X		X		X		X		X		X		

Ms. Lermer moved and Mr. Turchan seconded the amended motion as submitted to grant the variance to Article IV, Section 406.2, for relief from the lot merger requirement with the following conditions: (1) The view easement will remain as shown on the submitted plan, (2) the plan lot line relocation dated July 2004 by Ambit Engineering is applied after all town approvals are met, and (3) the easement documentation with the concerned parties must be submitted for town's records.

The vote was unanimous (5-0).

Section 406

The Board voted on the five criteria elements below for Case #2004:32: Sally Ann Marcotte/44 Ocean Boulevard.

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			
Board	Simmons	X		X		X		X		X		X		
	Peckham	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Lermer seated for Smith	X		X		X		X		X		X		

Mr. Turchan moved and Mr. Luff seconded the motion to grant a variance to Article IV, Section 406 for relief from the 30-foot rear setback requirement for a building renovation and relocation to allow a side setback of 9 feet for the northerly property line.

The vote was unanimous (5-0).

Ms. Simmons recessed the meeting at 8:22 PM.

Mr. Simmons reconvened the meeting at 8:30 PM.

New Business

2005:01 – Peter E. Simmons, 54 Walnut Avenue, North Hampton, NH 03862 requests a Variance to Article IV, Section 406.4 A, for relief from the minimum 100,000 sq. ft. non-wetland area requirement to build a duplex. The lot consists of 98,106 sq. feet of non-wetland area. The lot of record is 2.3 acres. *Property location: 267 Atlantic Avenue, I-B/R and R-1 zone district, Tax Map #014-170-002.*

Mr. Simmons recused himself.

Ms. Peckham assumed the Chair.

Mr. Worrell was seated for Mr. Simmons.

Peter S. Simmons was sworn in as well as other audience members. Mr. Simmons stated that the applicant was Peter E. Simmons of 54 Walnut Avenue. He remarked that there are three Peter Simmons, himself, his son and his grandson. Mr. Worrell noted that “non-wetland area” was posted and the posting should have been listed as “area” only not “non-wetland.” He added that the applicant needed a variance to upland area, not “non-wetland” area.

Mr. Simmons addressed the variance standards. He commented that each duplex would be a 26 feet by 48 feet unit. Mr. Simmons remarked that the current building would be jacked up and a first floor would be constructed underneath. He remarked that he needed a variance for 1,894 square feet to meet the requirement for a duplex.

Mr. Worrell inquired why the applicant didn’t build a single family instead of a duplex. The applicant stated that the value of the land necessitates a more intensive to receive an appropriate return on the investment. Mr. Simmons noted that the lot was in the I-B/R zone, but that it was in the best interest of the town to have a residential use rather than an industrial or commercial use on the lot. He further noted that his proposal established a buffer zone between the residential and commercial uses in the area.

Ms. Peckham opened the meeting to public comments.

Alana Hickey, 269 Atlantic Avenue, an abutter, supported the application adding that she would prefer that the property would be appropriately maintained. Kelly Parrott, 246 Atlantic Avenue, supported the residential use of the lot. Seth Hickey, 269 Atlantic Avenue, expressed concern about the traffic congestion in this area and suggested that perhaps sidewalks/crosswalks should be constructed. He noted that there was no shoulder along the road. Ms. Parrott noted that she previously had recommended a crosswalk and noted that state officials recently indicated that a crosswalk would be appropriate to address the traffic and congestion issues. Mr. Simmons noted that the mood of comments voiced regarding the area had changed from those in the past. He suggested a crosswalk near the Mobil Station would be amenable to the Simmons family by possibly donating land to help start a sidewalk/crosswalk project. Mr. Simmons appreciated Mrs. Parrott’s constructive comments.

Section 406.4

The Board voted on the five criteria elements below for Case #2005:01: Peter E. Simmons/267 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
		Y E S	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	ABS
Board	Worrell seated for Simmons	X		X		X		X		X		X		
	Peckham	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Lermer seated for Smith	X		X		X		X		X		X		

Ms. Lermer moved and Mr. Worrell seconded the motion to grant a variance to Article IV, Section 406.4 A, for relief from the minimum 100,000 square feet area requirement to build a duplex with the following conditions: (a) two (2) bedrooms per unit maximum and (b) three (3) parking spaces per unit maximum.

The vote was unanimous (5-0).

Ms. Peckham recessed the meeting at 9:10 PM.

Ms. Peckham reconvened the meeting at 9:20 PM.

Mr. Worrell retired from the Board.

Mr. Woodworth was seated for Mr. Simmons.

2005:02 — Ken Linseman, 1070 Ocean Boulevard, Hampton, NH 03842 - requests a Variance (1) from Article IV, Section 506.3.E, for relief to increase the allowable wall sign area from two-twelve square foot wall signs to seven signs totaling 367.3 square feet; and (2) from Article IV, Section 406.8 for relief to reduce the 10-foot wide landscape buffer to 4.5 feet wide along westerly boundary. *Property location: 72 Lafayette Road, I-B/R zone district, Tax Map #007-124-00.*

Peter S. Simmons verbally authorized Ken Linseman to represent him on this application.

Regarding Section 406.8

Atty. William T. Tanguay, McNeil, Taylor & Gallo, represented the applicant and reviewed the application details. He stated that they were granted a waiver from the Planning Board, but realized that they needed a variance. Atty. Tanguay noted that to accomplish the 10' foot landscape buffer, the owner would provide a 5.5-foot easement to complete the buffer as well. He added that if Mr. Simmons commercially developed the adjoining property, then the complete landscape buffer between the two parcels would equal 20 feet.

Ms. Peckham opened the meeting to public comments.

Ms. Parrott asked for details regarding the landscape buffer. Mr. Linseman indicated the entire 10 feet would be a landscape buffer not just the 4.5 feet on the lot in question. Atty. Tanguay displayed and explained the landscape plan. Alana Hickey, asked about details regarding the landscape buffer. Ms. Peckham indicated that the Planning Board would establish details at the time of Planning Board approval. Seth Hickey, asked how easement details could be defined before Planning Board approval. Ms. Peckham indicated that the ZBA could apply conditions in any approval.

Regarding Section 506.3.E.

Atty. Tanguay indicated that the calculation of 367.3 square feet listed in the application was an error. The correct total square footage for the signs would be 113.7 square feet. He displayed an architectural plan of the New England Rite-Aid plan indicating the locations of the proposed signs. The signs would be the following: (1) Rite Aid measuring 51.7 square feet, (2) Rite Aid Shied measuring 16.4 square feet, (3) Pharmacy sign measuring 25.1 square feet, (4) Food Mart sign measuring 5.6 square feet, (5) 1 HR Photo sign measuring 5.5 square feet, (6) GNC Live Well sign measuring 9.4 square feet and (7) Drive Thru Pharmacy sign [not part of the calculation] measuring 8.5 square feet.

Atty. Tanguay stated that the ordinance limit of two signs totaling 24 square foot was not practical for the size of the proposed building. He noted that the town's wall sign ordinance was outdated and had not been updated to reflect the sign of the times. Atty. Tanguay remarked that given the size of the building the proposed signage was undersigned. He added that with two major road frontage exposures, the signing requirement was not appropriate. Atty. Tanguay noted many businesses had received sign variances such as Marshalls, Hollywood Video, Shaw's and Home Depot. He noted that the ordinance allows for multiple uses. Atty. Tanguay remarked that although the Rite-Aid was a pharmacy, it consisted of multiple uses including a pharmacy, food mart, photo shop and a GNC store.

Atty. Tanguay addressed the five standards for the variance request.

Mr. Woodworth asked if and what signs would be illuminated. Both Mr. Kane and Mr. Schmitz, Project Engineer, B&L Companies, provided the details of the signage. Ms. Peckham questioned the need for the additional signs whereas the current facility, across the roadway, did not have the same signs.

Ms. Peckham opened the meeting to public comments.

Alana Hickey remarked that the proposed building had an appealing architecture and she supported their application. Peter S. Simmons, 29 Ocean Boulevard, supported the proposed signage. Kelly Parrott was concerned about the total illumination from the signage. She added that the illumination from the current site is clearly visible from her home. She suggested that the illuminated signs should be shut off when the business is closed. Gary Stevens, 228 Atlantic Avenue, owner of the current Rite-Aid location noted that all his tenants were told they had to conform to the sign ordinance. He felt the other signage was unnecessary. Chuck Hayes, 29 Lafayette Road asked when the ordinance was written, which was in 1975.

Mr. Luff moved and Ms. Lermer seconded the motion to grant the Variance to Article V, Section 506.3 E. for relief to increase the allowable wall sign area from two twelve-foot square wall signs to seven signs totaling 113.7 square feet with the following condition that only the Rite Aid sign can be illuminated internally as referenced in the applicant's submission plan. *The vote was 4-1 with Ms. Peckham abstaining.*

Mr. Woodworth retired from the Board.

Ms. Peckham retired from the Chair.

Mr. Simmons was reseated and resumed the Chair.

2005:03 — Barlo Signs, 158 Greeley Street, Hudson, NH 03051 – requests a Variance to Article V, Section 506.3 E. to allow two (2) 28.5 square foot wall signs for Cingular Wireless where no more than two (2) 12-square foot wall signs per unit are permitted. *Property location: 27 Lafayette Road, I-B/R zone district, Tax Map #007-057-000.*

In attendance

Don Reed, Barlo Signs, Hudson, NH

Ernie Pongratz, Business Development Manager, Cingular, Hanover, MA

Joe Pandolfo, Owner, PCI Realty North LLC, Burlington, MA

Mr. Reed, representing the applicant, detailed the sign particulars. He remarked the applicant leased two building spaces that are located on two road frontages. Mr. Reed stated that two signs were proposed so that passing road traffic could adequately see the signage. He commented that the hours of operation are the following: Monday thru Wednesday, 9 AM to 6 PM; Thursday thru Saturday, 9 AM to 8 PM. The business entrance is located on Cedar Road.

Mr. Simmons opened the meeting to public comments.

John Woodworth, 45 South Road, commented that the building is currently grossly over lit. He referred to the lights over the garage doors as particularly bothersome emitting excessive illumination onto the site and into the surrounding neighborhood. Mr. Woodworth noted that other on-site businesses' signs were already oversized. He felt one sign was sufficient. Mr. Woodworth commented the building is lit for 24 hours during the entire week. Mr. Pandolfo stated that the over-illumination issue could be addressed. He stated that he wished that he had been contacted about this illumination issue earlier. Mr. Pongratz commented that there would be very little light emitting from their signs. Mr. Pandolfo agreed to have all signs turned off at 11 PM for the complex.

Section 506.3.E.

The Board voted on the five criteria elements below for Case #2005:02: Barlo Signs/Cingular/Joseph Pandolfo, 27 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		
	Peckham	X		X		X		X		X		X		
	Luff	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Lermer seated for Smith	X		X		X		X		X		X		

Mr. Simmons moved and Ms. Lermer seconded the motion to grant the variance to Article V, Section 506.3 E. for relief allow two (2) 28.5-square foot wall signs for Cingular Wireless where no more than two (2) 12-foot square signs per unit are permitted with the following conditions: (1) The signage cannot be any brighter than one lumen per letter measurements as submitted, and (2) the 28.5-square foot signs must be turned off by 11 PM.

The vote was unanimous (5-0).

Adjournment

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

The meeting adjourned at 11:30 PM

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator