



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
April 20, 2005

Page 1 of 6

The Town of North Hampton Zoning Board of Adjustment (Board) met on Wednesday, April 20, 2005 in the Conference Room of the North Hampton Town Offices.

Attendance

Present: (1) Michele Peckham, Vice-Chair; (2) Ted Turchan; (3) Jennifer Lerner; (4) Ken Worrell seated for John Anthony Simmons; (5) Paul Marston seated for Susan Smith.

Alternate(s) Present: None.

Absent: (1) John Anthony Simmons, Chairman; (2) Susan Smith.

Staff Present: (1) Richard Mabey, Building Inspector/Code Enforcement Officer [BI/COE]; Krystina Deren Arrain, Recording Secretary/Planning and Zoning Administrator.

Ms. Peckham, seated as Chair, called the meeting to order at 7:05 PM.

Preliminary Matters; Recording Secretary Report

Ms. Peckham introduced the seated members of the Board.

Ms. Arrain, Recording Secretary, stated 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, April 8, 2005.

Old Business

2004:11 --Request for Rehearing on Crown Properties and Home Sales, 203 Lafayette Road, North Hampton, NH 03862. Joseph F. Fitzgerald, abutter of M/L 017-095-001, stated he was not properly notified of the above application and requested a rehearing. *North Hampton Property location: 203 Lafayette Road, I-B/R zone district, Tax Map #017-095-001.*

Joseph Fitzgerald, 185 Lafayette Road, submitted Exhibits #1 through #6 to the Board for the record and detailed the information he submitted. Mr. Fitzgerald's position remained that he had been an abutter since 1996 and had been omitted from this case and other notifications of Joe Roy's actions. As Mr. Fitzgerald noted, actions that Mr. Roy had taken as a result of approval of these applications had directly affected him.

Atty. Christopher Mulligan, Bosen & Springer, representing Joe Roy, submitted Atty. Bosen's letter, dated April 13, 2005, that stated other court case laws that negated Mr. Fitzgerald's position. Atty. Mulligan stated that there was material prejudice from Mr. Fitzgerald and the issue should be addressed at the Planning Board and not the ZBA.

Mr. Turchan remarked that he could not entertain a decision without knowing the facts in the court cases that were cited. Ms. Peckham felt that the issue cited by Mr. Fitzgerald provided some substance for questioning the process for the granting of the variance. Ms. Lerner questioned that since the abutter was not properly notified he had a case for rehearing.

Ms. Lerner personally welcomed Mr. Marston to the Board.

Mr. Worrell moved and Ms. Lerner seconded the motion to grant a rehearing.

The vote was 4-0-1 with Mr. Marston abstaining.

The Board will re-hear the case at the May 18, 2005 meeting.

New Business

2005:06 --**Simmons Trust, 72 Lafayette Road, North Hampton, NH 03862**, requests a Variance from Article IV, Section 406 for relief from the 25 foot side setback for a 10 foot side setback on one side of the property. *Property location: 44 Hobbs Road, R-1 zone district, Tax Map #014-010-000.*

Ms. Peckham presented a review of the case history for the Board from information from the town's file that had not been provided to the Board. She explained the details of the information and said that although Mr. Simmons is before the Board again [referencing the 1987 application for the same property, Case #1987:35], she stated that perhaps nothing has really changed and it would not be appropriate to proceed with the application. Ms. Peckham stated she preferred that the Board seek a legal opinion.

Peter Simmons voiced an objection that Ms. Peckham was publicly hearing his case and not providing him with an opportunity to rebut or clarify. A question arose, raised by Ben King, an abutter, at 39 Hobbs Road, that there appeared to be an error in abutter notification for Peter Brown, the abutter for Lot 14/9. Mr. Simmons requested re-notification of all abutters. Ms. Arrain remarked that it was the applicant's responsibility to provide corrected abutter addresses and labels as well as the notification fees.

Derrick Hill, 272 Atlantic Avenue, an abutter wanted to know if the Board could get a legal opinion before the next meeting. Ms. Peckham noted that she would compose and submit a request for a legal opinion from the NH Municipal Association/Local Government Center [NHMA/LGC] and anticipated that the Board would receive a response before May 18, 2005. Mr. Simmons requested to continue the case until May 18, 2005.

Ms. Lerner moved and Mr. Worrell seconded the motion to continue the case until May 18, 2005

The vote was unanimous (5-0).

2005:07 --**Simply the Best Tanning, 7 Lafayette Road, North Hampton, NH 03862**, requests a Variance from Article V, Section 506.3.E for relief to allow an illuminated 36 square foot wall sign when only a 24 square foot sign is permitted. *Property location: 7 Lafayette Road, I-B/R zone district, Tax Map #003-080-000.*

Danie Benson, 2 Hobbs Road, reviewed her application submission as well as that of the five standards to the Board.

Ms. Peckham opened the meeting to public comments either in support of or opposition to the application. Jon Rineman, 21 Woodland Road, stated that signage variances are constantly being brought before the Board, noting that the zoning ordinance was voted in by townspeople. He remarked that the Board should be careful in their deliberations. Ms. Benson said she agreed about maintaining proper signage but was concerned that their request could become a test case when what she asked was reasonable.

Mr. Turchan calculated that the applicant's business was 178 feet from the road and that equated visually to dimensions of 9" for capital letters and 7" for small letters. Ms. Lermer thought it was a tasteful and simple sign and the request was reasonable.

Ms. Lermer moved and Mr. Turchan seconded the motion to grant the use variance with the conditions that (1) the sign must be turned off by 11 PM; and (2) it must be a softly illuminated fluorescent light with a maximum wattage of 300.

Section 506.3.E

The Board voted on the five criteria elements below for Case #2005:07 Simply the Best Tanning/7 Lafayette Road.

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	Peckham	X		X		X		X		X		X		
	Turchan	X		X		X		X		X		X		
	Lermer	X		X		X		X		X		X		
	Worrell	X		X		X		X		X		X		
	Marston	X		X		X		X		X		X		

The vote was unanimous (5-0).

Ms. Peckham recessed the meeting at 8:12 PM

Ms. Peckham reconvened the meeting at 8:22 PM

2005:08 --**Tony & Kay Maneen, 14 North Main Street, West Brookfield, MA 01585**, requests a Special Exception to Article V, Section 513 to relocate an existing accessory apartment. *Property location: 139 Atlantic Avenue, R-2 zone district, Tax Map #006-087-000.*

Tony and Kay Maneen were in attendance. Mr. Maneen remarked that they wanted to buy the house at 139 Atlantic and wanted to relocate the current accessory apartment for his elderly parents. The accessory apartment would be a one bedroom with a rear building access and totaling 734 square feet. The current apartment does not provide easy access for his parents. The proposed

apartment would be ground level that would provide the easy access for his parents. Mr. Maneen emphasized that there would be no change to the external building structure.

Ms. Peckham read into the record, the zoning ordinance for Accessory Apartment:

Section 513 Accessory Apartment

Accessory apartments shall be permitted as a special exception, granted by the Zoning Board of Adjustment, provided that it complies with the conditions set forth below.

513.1 *The property must conform to the dimensional requirements of a single-family lot.*

513.2 *The existing dwelling must have existed prior to the adoption of this ordinance.*

513.3 *The apartment must be contained within the existing single-family dwelling.*

513.4 *The dwelling to which an accessory apartment is added must be owner-occupied and a minimum of 2,000 square feet in total floor area.*

513.5 *The size of the apartment shall be between 400 and 800 square feet.*

513.6 *No more than two bedrooms are permitted in the accessory apartment.*

513.7 *The owner shall provide evidence to the Building Inspector that septic facilities are adequate for both units according to the standards of the Town and the N.H. Water Supply and Pollution Control Division. If deemed necessary by the Building Inspector, such evidence shall be in the form of certification by a State of N.H. licensed septic system designer. The Building Inspector shall indicate his approval in writing to the Zoning Board of Adjustment.*

513.8 *The apartment shall be designed so that the appearance of the building remains that of a single-family dwelling. Any new entrance shall be located on the side or rear of the building. *3/13/90*

Ms. Peckham noted that the applicants were required to meet the standards as established by Section 506.8. The applicants responded and Ms. Peckham noted that the applicants had satisfied the criteria for a Special Exception, as expressed in to Article IV, Section 513 to relocate an existing accessory apartment.

Ms. Peckham opened the meeting to public comments either in support of or opposition to the application. Brian Donovan, 137 Atlantic, an abutter commented that he supported the Maneen's application. He stated that his only concern was that the house might, over time be converted into multi-tenant housing. He observed that other such large homes on Atlantic Avenue had been converted into multi-tenant housing.

Mr. Turchan moved and Ms. Lerner seconded the motion to grant a Special Exception and to include the two location drawings into the town record as well as finding that applicant had met all eight criteria.

The vote was unanimous (5-0).

2005:09 --**Diane L. Donahue, 8 Old Locke Road, North Hampton, NH 03862**, requests a Variance from Article IV, Section 409.9.B.1 for relief to allow the expansion of a non-conforming structure within the inland wetland buffer. *Property location: 8 Old Locke Road, R-2 zone district, Tax Map #005-078-000.*

In Attendance

Diane L. Donahue, Applicant

Michael Donahue, Applicant

Michael Keane, Michael J. Keane Architects PLLC, Newmarket, NH

Mr. Keane commented that he filed an application concurrently with the Little Boar's Head ZBA [LBH-ZBA] and LBH-ZBA could not meet earlier than May 3, 2005 to hear their case. He requested that since the abutters were in attendance, the applicant would like to proceed with her presentation at this meeting. The Board was in agreement to hear the case application information.

Mr. Keane reviewed the plans for expansion and noted that the wetland buffer was 50 feet rather than the current 100-foot ordinance. He submitted two letters of support from abutters. Mr. Keane noted that the applicant wanted to expand a total of two (2) additional feet into the wetland. The house already encroached into the wetlands by three (3) feet.

Ms. Peckham cited Harrington v. Town of Warner and remarked that the case ruling confused the issue in that the application was, in reality, a use variance, not an area variance. Mr. Donahue noted that the application was a direct application of Vigeant v. Town of Hudson that addressed an area variance in wetlands.

Norman Bolyea, 9 Old Locke Road, an abutter, supported the application and remarked that it would not be a detriment to the wetlands.

Mr. Turchan moved and Mr. Worrell seconded the motion to continue the case until May 18, 2005 upon the request of the applicant.

The vote was unanimous (5-0).

2005:10 --Gayton E. Turgeon/Turgeonelli's Groceria LLC, 180 Lafayette Road, Box #6, North Hampton, NH 03862, requests a Special Exception referencing Article V, Section 506.8 and 506.9. for installation of a temporary "A-Frame" sign measuring 45 inches by 25 inches to be used for promotions of the retail business on U.S. Route 1 [Lafayette Road]. *Property location: 180 Lafayette Road, I-B/R zone district, Tax Map #017-085-000.*

Mr. Turgeon remarked that the town notified him in August 2004 that A-frame signs were not permitted. He removed his sign, but noticed there had been a substantial decline in business. Mr. Turgeon noticed other retail business had A-frame signs and further added that there was a precedent that these signs are widely used. He commented that the A-frame sign would only be displayed during his business hours of 10 AM to 6:30 PM, 6 days a week.

Ms. Peckham read Section 506.8 into the record:

*506.8 Any signs not covered under this sign and billboard ordinance shall be dealt with under Special Exceptions before the Zoning Board of Adjustment. *3/6/73*

Ms. Peckham requested Mr. Turgeon to address the criteria in the ordinance. Mr. Turgeon cited the reasons in his opening statement and added that the sign would be 45" high. Mr. Marston suggested

possibly placing a marquee on his existing pylon sign that the applicant shares with Barker Plumbing, a neighboring business.

Ms. Peckham opened the meeting to public comments either in support of or opposition to the application. No comments were voiced. Mr. Marston remarked that he supported an increase in the size of the pylon sign rather than adding another sign.

Mr. Worrell moved and Mr. Marston seconded the motion to grant the Special Exception requiring that the sign must be well kept/maintained and removed from the display area during non-business hours.

The vote was unanimous (5-0).

Review of March 16, 2005 Minutes

Mr. Turchan moved and Ms. Peckham seconded the motion to accept the minutes as amended.

The vote was 4-0-1 with Mr. Marston abstaining because he had not been in attendance.

Other Business

Feedback on Letter to Planning Board regarding inputs/discussion on zoning ordinance

Upon John Anthony Simmon's request, Ms. Arrain noted that in the March 17, 2005 letter to the Planning Board, the ZBA expressed interest in providing inputs and information that the Planning Board may find useful in its work on updating the zoning ordinance. Ms. Arrain reported that at the April 18, 2005 Planning Board work session the issue was addressed. Mr. Kroner suggested that perhaps it would be useful to hear the ZBA's inputs. There was a general consensus that Mr. Kroner's idea had merit.

New Meeting Date and Location for ZBA Meetings

Ms. Arrain noted that because of the limited size of the Town Office Conference Room and a secondary security issue, the Town Administrator had suggested relocating the monthly ZBA meeting. The most logical location was the Mary Herbert Room, but that location was not available on Wednesdays. Ms. Arrain requested that Board members provide her with three (3) choices for a meeting date on a specific Tuesday or Thursday during a month.

Adjournment

Ms. Lerner moved and Mr. Worrell seconded the motion to adjourn at 9:28 PM.

The vote was unanimous (5-0).

Respectfully submitted,

Krystina Deren Arrain,
Recording Secretary/Planning & Zoning Administrator