

**MEETING MINUTES**  
**TOWN OF NORTH HAMPTON**  
**ZONING BOARD OF ADJUSTMENT**  
**June 28, 2005**

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*These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. All Exhibits mentioned in these minutes are a part of the Town Record.*

The Town of North Hampton Zoning Board of Adjustment (Board) met on Monday, June 28, 2005 in the Mary Herbert Conference Room on Atlantic Avenue.

**Attendance**

**Present:** (1) John Anthony Simmons, Chair; (2) Michele Peckham, Vice-Chair; (3) Ted Turchan; (4) Susan Smith; (5) Jennifer Lerner

**Alternate(s) Present:** None.

**Staff Present:** Richard Mabey, Building Inspector/Code Enforcement Officer [BI/COE]; Maureen Cooper stand-in Recording Secretary

Mr. Simmons convened the meeting at 6:10 p.m.

**Preliminary Matters**

Mr. Simmons announced that more correspondence had been received on the cell tower issue and that a quick review was needed. He announced that case 2005:17 – Daniel P. Schneider, Sr., 7 Atlantic Avenue, North Hampton, NH 03862, requests a Special Exception to Article V, Section 507 to conduct a Home Occupation, *Property location: 7 Atlantic Avenue, R-2 zone district, Tax Map #001-114-000*, had been withdrawn, and ensured that there were no attendees present regarding that application.

**Procedure; Swearing in of Witnesses; Recording Secretary Report**

Mr. Simmons announced that the Agenda and Rules of Procedure were available for review.

Mr. Simmons swore in witnesses present.

Mr. Simmons stated that notice of the meeting was properly posted on June 10, 2005 at (1) Library, (2) Post Office and (3) Town Clerk and the (4) North Hampton Town Website and published in the Hampton Union, with a correction posted on June 14, 2005.

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**New Business**

Mr. Simmons announced that the Board would review the cell tower application as the last order of business, since it would take much more time, and move the other two cases up to first and second order of business.

**2005:18 – Eric Schultz, C&S Signs/Nextel, 45 Lafayette Road, North Hampton, NH 03862**, requests a Variance to Article V, Section 506.3.E to allow a 46 square foot wall sign when only a 24 square foot sign is permitted. *Property location: 45 Lafayette Road, I-B/R zone district, Tax Map #007-053-000.*

Mr. Eric Schultz representing C&S Signs and also Blair Signs, the sign manufacturer for Nextel, submitted that due to the extreme setback of the Nextel building, they required a larger sign. He stated that historically the Board had granted most businesses in that location the same variance. He also stated that Nextel does not have custom signs, but pre-made signs for the business to choose from, and the 46 square foot sign fits the requirement for visibility best.

Mr. Simmons stated that the application was missing a letter from the property owner giving permission to apply. He read the applicant's answers to criterion #1-5 in the application for the benefit of those present. Mr. Schultz discussed with the Board that the sign will be lit by "photo eye" when it becomes dark, but that it automatically shuts off at a pre-programmed time. Ms. Smith confirmed that the requested sign is no larger than the signs of the other tenants in the plaza, and Mr. Schultz confirmed the fact.

There was no public comment regarding this case. During Board review, Mr. Simmons confirmed with Mr. Schultz the adherence to the spec sheet that had been distributed.

**Ms. Lerner moved and Ms. Smith seconded the motion to grant the use variance with the stipulation that (1) the light is off by 11:00 p.m., and (2) is adherent with the spec sheet.**

**Mr. Schultz dated and initialed the spec sheet as Exhibit 1 for 2005:18.**

**The Board voted 5-0 in the affirmative that all five of the criterion had been met. The vote was 5-0.**

**2005:20 – Melinda Fuller, 21 New Road, North Hampton, NH 03862**, requests a Special Exception to Article V, Section 509 to operate a Family Day Care. *Property location: 21 New Road, R-1 zone district, Tax Map #014-095-000.*

Mr. Jerome Fuller, Melinda's husband, presented on Melinda Fuller's behalf. Mr. Simmons reviewed portions of the application letter with Mr. Fuller. Mrs. Fuller had owned and was licensed for a Day Care in Waltham, MA for one year. They closed the day care 18 months ago. There is an application for a NH state license currently being processed, although it is not needed, as Mrs. Fuller will only be taking in three children. They had had a "sandwich board" sign advertising the availability of day care, 4 x 3 ½ ft. Mr. Mabey had requested that the sign be removed until the application had been

reviewed and voted on. The current sign ordinance 506.3.C states that a sign no larger than 4 square feet is allowed, and that no ground signs are allowed. Mr. Fuller stated that the sign would only be posted if there were vacancies.

There was discussion about the size of the driveway, the acreage of the property and where the activities would take place on the property. Mr. Simmons read through the conditions of Section 509. Ms. Peckham asked if they had a letter from the State stating that they did not need a license. Mr. Fuller was under the assumption that this claim was stipulated in a document from the Day Care Licensing Board.

Frances Ambrose, 19 New Road, submitted a letter, marked as Exhibit 1 for this application, outlining the following concerns:

- How will this affect the property value of her home?
- Increased traffic unwelcome.
- Lack of sidewalks or places to park on road.
- Additional noise from more children.
- Problems with the Fuller's dog in the past.
- Known sex offenders in area at nearby residences, and no fence in Fuller's yard. They have two children of their own.
- They had chosen their home on New Road specifically because it was a quiet area.

Ms. Lerner asked if she was aware of the other business in existence on her road two houses away, and Ms. Ambrose was not.

Emile Chretien, 16 New Road, spoke of past accidents at the end of their driveway because people who cannot park on the road will park on their property on their side of the street, and recently a landscaper knocked over their lamppost. The issues increase in the wintertime with snow banks.

Dorita Chretien, 16 New Road, submitted a petition signed by almost all residents on New Road who were opposed to the daycare, a total of 15 signatures, marked as Exhibit 2 for this application. Ms. Chrétien asked if anyone on the street could apply for a day care. Mr. Simmons informed her that anyone could apply for a day care under the zoning ordinance as a special exception. The petitioner's concerns included the following:

- Driveway
- Safety of children and the danger caused by cars on road and school bus stop on the road. She noted a particular incident where a car on the road did not stop for the kids getting off the bus.
- Excess speed of cars going by because New Road is a shortcut to Route 1

Ms. Chretien also expressed concerns about additional noise brought by additional cars and children, and that they also had made their decision to buy based on the fact that there were no businesses on the road that they knew of.

Bozena Toczydlowski, 14 New Road, also stated their concern about additional noise and traffic. She noted that they did not want additional noise in the area. She noted she was very close to the applicant's home.

John Toczydlowski, 14 New Road, stated ~~concern~~ he had the same noise and traffic concerns and concerns about possible depreciation of property value. He questioned whether, and snow removal from the drive would make the driveway more narrow. He also noted that he was unaware of the other businesses on the street. Mr. Simmons and Ms. Lerner discussed other businesses on the road with ~~the abutter~~ them, including an upholstery business with employees, and a lunch truck. The board noted that some of these businesses have employees and persons dropping off items for service.

David Greitzer, 10 New Road, on behalf of himself and his wife, expressed the same concerns voiced earlier, with the main concern being traffic and how fast motorcycles speed down the road.

Dorita Chrecien ~~announced~~ asked what would happen if the application was granted and the applicant moved, what would happen to the day care operation. Mr. Simmons stated that because the application was for a special exception that the new owner would also be able to operate a day care on the property. Ms. Chrecien noted that that the home is owned by Mr. Fuller's mother, and asked if Mr. Fuller's mother would continue day care if he and his wife were to move. Mr. Simmons clarified that the Special Exception is for the property, not for the residents.

Frances Ambrose expressed concern about number of children increasing beyond the number of children originally licensed by the State, and Mr. Simmons stated that that would be an issue with the State concerning licensing, not the Town. Mr. Turchan called ~~the board's~~ their attention to Section 509.2 which states that there can be no more than six pre-school children full time and no more than three school-aged children part time within the day care, including their own children. Thus, the ordinance limited the number of children which would be allowed to attend the day care. Mr. Turchen noted that the numbers of children are limited by the Town ordinance.

Mr. Simmons asked if there were further questions and hearing none, he closed the public hearing and initiated Board discussion. Mr. Simmons noted that the application requires that the applicant if not the owner of the property, provide written authorization from the property owner. The board ~~They~~ brought up the need for a letter from the property owner authorizing the petitioner to submit the application. Mr. Simmons noted that the authorization would be required to be submitted if the application was approved. There was discussion as to the number of children which could attend the day care and the number of cars that would potentially affect the neighborhood. Ms. Lerner noted that drop offs of kids would probably not be all day long. The board inquired as to whether the Fullers could create a place for the cars to turn around when dropping off and picking up children. This was the biggest concern that the Board had. Mr. Simmons asked the applicant how persons entered and exited his driveway. The applicant noted that cars typically exited by backing out of the driveway. ~~There was some~~ Mr. Simmons asked the

applicant if the yard allowed for an area for a possible turnaround. The applicant indicated that he did not know if a turnaround could be constructed and noted that everyone backs up onto the street. discussion as to whether Mr. Mabey should go to the Fuller property to produce a scale drawing outlining the possibility of a turnaround area for cars. Mr. Simmons noted that the ability of the driveway to accommodate additional cars and a turnaround area goes to the issue of traffic and impact on the neighborhood. Mr. Simmons asked if the applicant had a two car garage. He stated yes. Mr. Fuller explained that the driveway was one car wide up to the area of the garage then it widens to two car width, and the applicant can drive around to the back yard. There was further discussion as to where a turnaround area could be placed, and it was ultimately determined that there is not enough room, due to the setbacks and trees in the yard. Mrs. Peckham asked if the applicant parked in the garage. He stated he did. Mrs. Peckham noted that the cars would probably not come at the same time and that the probability of two or more cars arriving at the same time is slim, and that because two cars can fit at the top of the driveway, there would not be much of a traffic impact on the neighborhood. The Board had a discussion as to whether Mr. Mabey should go to the Fuller property to produce a scale drawing outlining the possibility of a turnaround area for cars

The board they asked Mr. Fuller about hours of operation, which will be approximately 7:00 am to 5:00 pm, Monday through Friday. Mr. Fuller explained that his wife is a real estate agent planning to go back full time in the fall, and this day care was originally intended for this summer only. They had not discussed any future summers. Mr. Simmons noted that he did not like the fact that if there was more than one car in the driveway, there may be a bottleneck of cars lined up in the driveway. He also noted that he did not think the number of cars added to the neighborhood from the daycare would be significant, but that he wished there was room for a turnaround.

Mr. Fuller indicated that he could live with the board limiting his day care to a summer operation only. Emile Chrecien asked if they had a pool, and Mr. Fuller answered that it was an inflatable pool, which was not very deep.

The Board asked where the children would play. The applicant indicated that the kids would play in the backyard which The back yard is approximately  $\frac{3}{4}$  of an acre, bordered by woods and bushes. Mr. Simmons asked if the backyard was safe. The applicant noted yes. Mr. Greitzer asked if it was considered a safe play area for children with no fenced-in yard. area. Mr. Simmons answered that nothing would stop children from wandering off with the exception of proper supervision. Mr. Simmons noted that a fenced in yard was not a requirement of the ordinance.

Ms. Smith asked the applicant how many children he anticipated this summer. He noted 3 at this time. Bozena Toczydowski asked if Mr. Fuller's mother could run the day care if his family were to move out. Mr. Simmons noted that the condition in the ordinance states that the family member must be residing in the dwelling unit in order to run the day care. Mr. Fuller replied that that was highly unlikely that his mother would move in with them and run the day care. The board discussed whether they could limit the day care operation to only one summer. They determined that they could not. Dorita Chrecien

~~expressed liability concerns~~ asked who would be liable if her animals, relatives or property were hit by drivers coming onto the road from the Fuller property. She noted her concern for this issue.

Ms. Peckham moved that they continue after the drawing of a potential turnaround area was submitted. Mr. Simmons noted that since the turn around area was not the sole issue and wWith time being of the essence for a summer-time day care, Mr. Simmons gave Mr. Fuller the option of receiving a vote that night with the risk that the lack of turnaround might be a concern. Mr. Fuller asked that they the board provide a decision that night as to his application.

Mr. Simmons noted that if there is no turnaround then traffic has to back out and he summarized that the traffic on the Seacoast was increasing in all areas but that he felt that the impact added by the applicant's business with three children is very little. He noted that the ordinance lays out a test the board has to abide by, and read into the record the criteria concerned with a home-based business. Mr. Simmons noted that it appeared that all of the criteria had been met as to the first three criteria and the board should deliberate as to whether the applicant had met the last criteria. Ms. Peckham, addressing the last criteria stated that she did not think that the addition of 6 kids with the maximum of 6 cars would add a significant impact to the neighborhood. Peckham also stated she did not think that all the cars would arrive at the same time and if there was a traffic issue in the driveway that cars could go around the block. She also stated that the fact that the daycare was to be a summer day care also helped to limit the impact to the area and resolved the bus issue brought up earlier. She also noted that the back yard being not fenced was not uncommon, and did not make the backyard unsafe. Ms. Lermer stated that she agreed with Mrs. Peckham-

The board discussed limiting the daycare to summer operation as a condition of approval. Ms. Peckham moved and Ms. Lermer seconded that the application be approved with the following conditions:

Day care operates only in summer months based on school calendar with hours from 7:30 am to 6:00 pm. Mr. Turchan motioned amended specific dates motion accepted June 15 through September 15. Ms. Peckham amended the motion requiring a letter from the property owner giving permission to Mrs. Fuller to apply for a special exception to be submitted within the next five business days.

Ms. Lermer seconded the amended motions.

The vote was 3-2

Mr. Simmons confirmed with Mr. Mabey that the Fullers would need a permit for signage.

2005:19 – Cellco Partnership d/b/a Verizon Wireless, 400 Friberg Parkway, Westborough, MA 01581, requests a Variance (1) from Article IV, Section 415.3 to locate

cate a 120-foot stealth monopine telecommunications tower on Chapel Road; and (2) from Article IV, Section 409.9 for relief from the 100-foot wetland setback. *Property location: Chapel Road, R-2 zone district, Tax Map #005-044-000.*

In Attendance

Atty. Daniel Klasnick, Duval & Associates, LLC  
Dave Tivnan, Site Acquisition Consultant, Verizon Wireless  
Bob Hogan, Construction Manager, Verizon Wireless  
Michael Creamer, RF Engineer, Verizon Wireless  
John Hayes, Wetland Scientist and NH Soil Consultant

Mr. Simmons announced that there was one additional letter of June 21, 2005 received before the meeting from Michael Pardue, Town Administrator, to North Hampton residents. The letter included a Statement of Position from the Board of Selectmen regarding the siting of personal wireless facilities in the Town of North Hampton.

Attorney Robert Fields, representing the Donksers, asked that the objection they had raised to the Woodland Road case (2005:14) would not be waived if he said nothing during the preceding. Mr. Simmons confirmed that the two issues are considered completely separate entities.

Atty. Daniel Klasnick, Duval & Associates, LLC, representing the applicant, began his presentation. He submitted copies of his presentation to the Board. Mr. Simmons requested that Curriculum Vitae be submitted to the Board for any experts that will be submitting evidence. Atty. Klasnick reviewed the two balloon tests done on August 20, 2003 and November 10, 2004 when leaves were off the trees. They had consulted with the Planning Board on August 3, 2004 and a stealth monopine was suggested. There was a Design Review Meeting with the Planning Board on February 1, 2005 and based on opinions expressed by the Board and residents at that meeting, it was decided that the variances be applied for.

Atty. Klasnick's presentation included the following:

The land on Chapel Road is unrestricted Town-owned land. The application contains the same chart submitted by Grubb & Ellis|Coldstream Real Estate in the 2005:14 application regarding other town-owned land investigated as possible sites for the cell tower. The chart was made public before it was included in the 2005:14 application. The current gap in coverage represents a hardship and that public interest will be served with the tower. The stealth design complies with the zoning ordinance. The design is consistent with the wooded area. There is minimal relief requested. There will be no diminution of property values in the area. The facility will be located outside Wetland Conservation areas. The facility will be installed and operated without negative impact on natural wetlands or flood protection. The monopine stands 120 feet tall with space for three other carriers. Each carrier brings its own equipment shed to the compound.

Mr. Simmons asked about the unique conditions of the land. Atty. Klasnick explained that the property is essentially an island surrounding by wetlands. The property could be



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used for few other permissible purposes allowed by zoning ordinance. His presentation included a drawing of the entire compound, and maps of existing and proposed coverage areas. The access road to the site is 15 feet wide. There will be no impact to wetlands during construction, and minimal impact after.

Ms. Smith noted that the report from Donald Haes, Jr., Radiation Safety Specialist, in Section 14 of the application was very similar to the report submitted for the Woodland Road site (2005:14). Ms. Peckham asked if Dr. Haes had gone to the site. Atty. Klasnick explained that there was nothing to test at the site, and that the report was done based on existing facilities and their impact.

Ms. Smith turned to Section 9 of the application and asked about the emergency backup generator. Mr. Bob Hogan, Construction Manager for Verizon Wireless explained that the emergency backup generator was activated remotely, located inside an equipment shelter, and exercised once a week for one minute. There is epoxy on the floor of each equipment shelter which further deadens the sound. The decibel level is extremely low. Atty. Klasnick submitted a sound study and the Curriculum Vitae of the scientist who completed the study, and they were labeled Exhibit 3 and 4. Mr. Michael Creamer, Radio Frequency Design Engineer for Verizon Wireless, reviewed drawings of existing coverage, proposed coverage of the Chapel Road facility, and proposed coverage of all local facilities (copies of these were turned in as Exhibit 5, 6 and 7).

Laurie Stone, 21 Chapel Road, wanted proof that there would be no diminution in property values and stated that she could not find any supporting data on the internet. Atty. Klasnick reviewed the report in Section 18 of the application from Sargent Consulting, Ltd. The report explains the perception of potential buyers. Ms. Stone asked the Board for permission to submit letters proving diminution if she could find proof.

Makena Herget, 17 Cotton Farm Lane, an abutter, asked where the tower currently located in Rye is, and submitted that most homes in that area, except for farms, are in the \$300,000 range.

Gerlad Billadeau, 10 Bradley Lane, an abutter, expressed his opinion that North Hampton is a beautiful town and the living is affordable. He stated that the 120 foot monopine rises above a 40 foot treeline, and is concerned about the beauty of the area.

Bob Milliken, 39 Chapel Road, explained that he had had his own balloon test done using 3 separate balloons in February, 2005. He submitted pictures (Exhibit 8 and 9). He questions the balloon test height claimed by Verizon. He had requested at the Board Meeting in February, 2005 that these pictures be compared to the November balloon test pictures submitted by Verizon. He also questioned whether Chapel Road is the optimum site. Mr. Michael Creamer, RF Engineer for Verizon Wireless, estimated a 2 mile coverage achieved by the tower. Mr. Milliken submitted that the site is  $\frac{3}{4}$  mile from the ocean. He had learned in a previous discussion that there may be a second location needed over and above this location.



Gerlad Billadeau asked for clarification, was the tower 135 feet or 120 feet? Atty. Klasnick explained that the 120 feet was the alternative structure applied for based on the two previous balloon tests.

**\*\*Mr. Craig Shreck,** \_\_\_\_\_, asked how close the facility is to the wetlands. Atty. Klasnick explained that the emergency backup generator will be set back greater than 75 feet from the boundary of the wetland. The equipment shelter and the monopine are located outside the 50 foot wetland buffer zone. The zoning drawings are in Section 4 of the application.

Atty. John Sokul, Jr., Cleveland, Waters and Bass, representing Michael and Kathleen Megna, 41-43 Chapel Road, began his rebuttal. He confirmed with the Board that they had received all of his letters, and submitted additional copies, marked as Exhibit 11, along with the copies of the Deed history of the property in question. He submitted to the Board that the letter from the Conservation Commission, read at the last meeting for 2005:14, was intended for this application as well. Atty. Sokul has been practicing land use law for 22 years. His rebuttal included the following points: A Conservation Easement Deed exists for the land in question, and the application violates that Easement Deed. He cited sections of the Deed that state “exclusively for conservation purposes”, among other restrictions. He presented a drawing (marked Exhibit 10) of the Conservation Easement Plan and reviewed it with the Board. He objected to all variances requested and argued each item in application. The Board noted all cases cited during the rebuttal, and Atty. Sokul will provide copies of all cases cited. He reserved the right to comment on the wetlands variance at a later date.

**Ms. \_\_\_\_\_ Danehy, 10 Chapel Road, submitted that she and a group of friends are members of \_\_\_\_\_, and that they have given much time and money to enhance the neighborhood.** They are in opposition of the cell tower and feel that it would be against all that they have worked to achieve.

Allen Williams, 38 Chapel Road, an abutter, submitted pictures (marked as Exhibit 12, 13, 14, 15) of Chapel Road with rain and flooding in the area.

Richard Skowronski, 142 Mill Road, inquired as to why do the proposed cell tower sites consistently have to be in someone’s back yard? He stated that has 40 acres that the applicants might be interested in.

**Kathy Megna, 41 Chapel Road, an abutter, submitted that she had heard of fiber optic options along towers \_\_\_\_\_.**

Atty. Robert Fields suggested integration of the two cases, 2005:14 and 2005:19.

Due to the lateness of the meeting, the Board ensured Atty. Klasnick that he would be given the opportunity to rebut the claims made at a continuance. Mr. Simmons asked for another balloon test. Atty. Klasnick submitted letters with statements from the companies that had performed the first two balloon tests (Exhibit 17 and 18).

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**A continuance meeting for 2005:19 is included in the Agenda for the Zoning Board Administration Meeting on July 26, 2005.**

Mr. Dave Tivnan, Verizon Wireless, scheduled the next balloon test for Tuesday, July 12, 2005 from 8:00 am to 2:00 pm with a rain or wind date of Thursday, July 14 for the same hours. Abutters are welcome to request that the applicant take pictures from their property. Mr. Simmons asked that respect for the property owners and the workers be shown by those coming to view the balloon test. Mr. Simmons expressed understanding of the neighbors' and abutters' stance if they choose not to allow the Verizon Wireless team onto their property. He also brought up the point from the 2005:14 meeting that any abutters or neighbors that did not allow the pictures to be taken from the property would be depriving the Board of evidence that would help substantiate their claim about what effect it would have on their property.

Dorothy Williams, 38 Chapel Road, an abutter, submitted two pictures (Exhibit 16) that she had taken from Atlantic Avenue looking toward Chapel Road during the balloon test on January 9, 2005.

*[Note from Maureen: this date disagrees with all balloon test dates from Atty. Klasnick and Mr. Milliken]*

### **Acceptance of Minutes from June 20, 2005**

**The vote was unanimous (4-0). Ms. Smith left early.**

### **Other Business**

The Board discussed the rehearing granted for **2004:11** --Rehearing of a Rehearing on Crown Properties and Home Sales, 203 Lafayette Road, North Hampton, NH 03862 for 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, R-2 and R-3 zone district, Tax Map #016-012-000, 021-007-000, 017-088 thru 091-000.

**The rehearing will be held on Wednesday, July 6, 2005 at 12:00 pm in the Mary Herbert Room.**

**A continuation of this meeting is scheduled for Monday, July 18, 2005 from 6:00 p.m. to 10:00 p.m.**

### **Adjournment**

**Mr. Simmons moved and Ms. Peckham seconded the motion to adjourn at 10:30 p.m.**

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*The vote was unanimous (4-0) as Ms. Smith had left earlier.*

Respectfully submitted,

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