



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
July 26, 2005
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Town of North Hampton Zoning Board of Adjustment met on Tuesday, July 26, 2005 in the Mary Herbert Room at the Town Offices.

Attendance

Present: (1) Jennifer Lerner; (2) Susan Smith; (3) John Anthony Simmons, Chairman; (4) Michele Peckham, Vice Chairperson
Alternates Present: (1) John Woodworth; (2) Ken Worrell
Absent: (1) Ted Turchan
Staff Present: (1) Richard Maybey, Building Inspector/Code Enforcement Officer [BI/COE]; (2) Carla Bonney, Recording Secretary

Mr. Simmons, Chair called the meeting to order at 6:12pm.

Preliminary Matters

Monthly meetings have been changed from 3rd Wednesday to 4th Tuesday of each month.

Mr Simmons received an informational cd-rom from New Hampshire Housing “*Housing and School Enrollment in New Hampshire*” which was given to Mr. Mabey to add to Town Hall resource library.

Dated 7/25/05 from Attorney Sharon Petty Somers on behalf of **Fred Ambrose**; a motion for a re-hearing on a special exception (dated June 25th) for property located at **21 New Road, North Hampton**. The Board agreed it should be put on the agenda for the next ZBA meeting on August 16, 2005.

Newly amended *Rules & Procedures* to be signed and notarized at the August 16th meeting. Rules amended to allow meeting notifications (in certain circumstances) to go in the Portsmouth Herald in addition to the Hampton Union Sunday Edition.

Attorney Klasnick, representing the applicant **Cellco**, came forward at Mr. Simmons request. Original Board member Turchan was unable to make this meeting; Attorney Klasnick was asked if his client would rather reschedule or have an alternate sit for Mr. Turchan. After consulting with Cellco, Attorney Klasnick requested a rescheduling for the **Chapel Road** site. A separate hearing date of **August 30, 2005 at 6pm** was agreed upon after much discussion. (45:30 on cd)

Newly revised *Ordinance Book* for the Town of North Hampton available at the Town Hall Offices.

Swearing in of Witnesses.

Mr. Mabey reported that notices of this meeting had been posted July 14, 2005 at the Library, Post Office, Town Clerk's Office, Town Website and in the paper 9 days prior.

03:24 on cd

Old Business

2004:11 - 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.*

Mr. Simmons recused himself from the board. Vice-Chair Peckham to lead the following hearing; in addition, Ken Worrell joined the board as a member of the board at the original hearing.

15:10 on cd

On July 6, 2005, the ZBA voted 2-1 to grant Mr. Fitzgerald a re-hearing on Crown Properties application for a variance. At the time there were only 3 members of the Board present. Ms. Peckham read into the record a letter dated July 15, 2005 to the Board from Attorney John K. Bosen:

RE: 203 Lafayette Road, Crown Properties and Home Sales, LLC, 2004-11

Dear Mr. Simmons:

As you are no doubt aware, on July 6 2005, the ZBA voted 2 to 1 to grant Joe Fitzgerald's second application to rehear the above variance. The rehearing is scheduled for July 26, 2005.

This is to advise you of our position that the July 6, 2005 vote is legally insufficient to afford Mr. Fitzgerald a rehearing. By law, it takes the concurring vote of three members of the board to reverse any action of an administrative official, or to decide in favor of the applicant on any matter on which the board is required to pass. RSA 674:33, III. In the situation where a bare quorum is voting on an application, it takes a unanimous vote in order for relief to be granted. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning 3d §21.03 (2000). Two votes is legally insufficient to grant a request for rehearing.

Accordingly, the unanimous May 18, 2005 decision of the board granting the variance remains in effect, and Joe Fitzgerald must pursue whatever recourse he deems appropriate in the Superior Court.

Thank you for your attention - Sincerely - John K. Bosen

In response to that letter, Mr. Fitzgerald wrote a letter to the Board dated July 21, 2005 to the Board which Ms. Peckham read into the record:

RE: Crown Properties, LLC, 2004-11

Dear Jon:

In regards to John K. Bosen's letter of July 15, 2005 (entered into the record above) I totally disagree with John K. Bosen's analysis of the law.

The ZBA voted for a rehearing on July 6, 2005. The vote was a majority of the 3 votes cast.

If the ZBA Board finds that John K. Bosen is correct, I would like the full board of 5 to take a vote again during the meeting scheduled on July 26, 2005. There is no reason why the full board can not vote on this issue at hand so that we can move forward, if the Board thinks it is required by law to be legally sufficient.
Sincerely - Joseph F. Fitzgerald

THE ZBA sought a legal opinion from the Local Government Center. Ms. Peckham read into the record their response, dated July 26, 2005:

Dear Mr. Mabey::

This letter will confirm our telephone conversation in regards to this factual situation. An applicant to the Zoning Board of Adjustment is granted a variance at a regular meeting of the Board by a majority of the 5 member board. An abutter is aggrieved by this decision, and in accordance with RSA 677 chose to file a request for re-hearing. A request for rehearing comes before the board, but only 3 members are present to vote upon the request. The motion to grant the request receives 2 votes in favor and one vote against. The question is whether the motion for rehearing has in fact been granted. The question arises because of RSA 674:33, III which reads as follows 'it takes the concurring vote of three members of the board shall be necessary to reverse any action of an administrative official, or to decide in favor of the applicant on any matter on which the board is required to pass'

In your factual situation, it is the abutter who has requested the rehearing, and not the applicant. This factual situation is unusual in that a request for a rehearing is normally placed before all Board members who sat at the original hearing of the case instead of the Board with some present members absent. Because this vote was taken by a quorum of the 5 person board, and it did not favor the applicant, it is my opinion that the vote to grant the rehearing was a valid and effective action of the Board as then constituted and did send the matter back to the full Board for a re-hearing. Nothing in this opinion is intended as a comment upon the underlying facts of the case since we have not in any way examined those facts.

Sincerely, Paul _____

Much discussion ensued as to which interpretation should be adapted for this case. Several polls were taken; Mr. Fitzgerald was asked if he wanted a full board, which he did, and agreed to accept whatever decision they would make.

Ms. Peckham moved and Ms. Smith seconded that due to her interpretation of RSA 674.33, III, the vote of 2:1 was insufficient and the May 15, 2005 decision to grant the variance was upheld.

Vote was 4:0:1 with Ms. Lermer abstaining.

43:16 on cd

Mr. Simmons returned to Chair at 7:00pm.

New Business*01:02:50 on cd*

2005:21 - Carmine & Maureen Pierro, 102 South Road, North Hampton NH 03862, request s a variance to Article IV, Section 406 for relief from a twenty-five foot sideline setback to a fifteen foot sideline setback to add an addition to a garage. *Property location: 102 South Road, R-1 zone district, Tax Map #008-156-000.*

The Board had a packet containing June 16, 2005 denial letter; June 16, 2005 application; copy of variance standards; letter from Mrs. Pierro dated June 15, 2005; copy of tax map; abutters list; sketches.

Mr. Pierro stood to explain that he and his wife want a garage for aesthetic reasons and to protect their belongings. He covered any foreseeable drainage issues, answered questions as to decision on location, and mentioned having his neighbors approval. Discussion as to time-frame restrictions.

Ms. Smith motioned and Mr. Simmons seconded to grant the variance with the stipulation that the garage be enclosed by January 26, 2007.

Vote was unanimous (5:0)

01:37:27 on cd

2005:22 - Yankee Fireplace, 7 Lafayette Road, North Hampton NH 03862, request s a variance to Article V, Section 506.3.E to allow a 40.5 square foot wall sign and a 60.25 square foot wall sign when only two 12 foot wall signs per unit in a multi-unit structure are permitted. *Property location: 7 Lafayette Road, I-B/R zone district, Tax Map #003-080-000.*

The Board had a packet containing June 2, 2005 denial letter; application; 5 criterion supplement; 2 pages of signage diagrams; June 28, 2005 letter from Tina Montgomery authorizing sign placement; list of abutters; site plan dated February 10, 2003.

Jeff (*Salsa??*) stood to explain that he felt his business needed the variance due to the amount of square footage they occupy. Also feels that the actual entrance needs clarification as it is not clear from the street.

Michael Hart, owner of the **Hampton Air Field** joined the discussion to voice his displeasure not at the request for a variance, but to bring to the ZBA's attention the fact that he feels pushed around by the landowner of 7 Lafayette Road, Tina Montgomery.

8:42pm, Ms. Peckham recused herself from the Board, stating her position as Ms. Montgomery's representing attorney as being a conflict of interest.

Discussion fluctuated between signage sizing appropriateness and placement, and the relevance of that in relation to Ms. Montgomery's request that Mr. Hart move his airport sign. Unit size versus number of units was questioned in understanding ordinance intents. Position of the new Airport sign in relation to size/position on Yankee Fireplace wall signage directly on the main street.

02:49:39

Mr. Simmons motioned and Ms. Smith seconded that action be postponed on the wall sign on Route 1 until such time as the Private Property dispute/location of the Airport sign (Hart/Montgomery dispute) is settled. Action on the other sign, over the door, to proceed. *Vote was 3:0:1 with Mr. Woodworth abstaining, saying he was not comfortable giving the go-ahead on just one sign, as that should still affect the Route 1 sign.*

Discussion among the Board as to appropriateness (relative size/color/font) of the one sign to be allowed over the door. Mr. (Salsa?) submitted into the record Exhibit A; a photograph with the proposed sign superimposed. The owner was asked for his input as to other proposals if his variances were not approved. All but Mr. Woodworth agreed that all 5 necessary criterion had been met

Mr. Simmons moved and _____ seconded that the Board approve as requested the 40.5 square foot sign, and although a spec sheet was not included, that the sign (faithfully and consistent with Exhibit A) goes up over the entrance at the Easternmost point on the Southerly side of the Northerly building. *Vote was 3:0:1 with Mr. Woodworth abstaining*

9:30pm reconvene, Ms. Peckham rejoined the Board.

03:01:37 on cd

2005:23 - Jarrod Patten, 3 Fern Road, North Hampton NH 03862, request s a variance to Article IV, Section 409.9-A 2 for relief from a fifty foot setback from wetlands to a twenty-five foot setback from wetlands for a permit for a single family home. *Property location: 3 Fern Road, R-1 zone district, Tax Map #008-023-000.*

Mr. Patten submitted a written standard variance analysis to the Board. Mr. Patten stood to explain that piles of loam/fill dumped by his neighbor have created the wetlands by redirecting run-off from the street. Answered the Board's questions re: placement of septic, perk tests, lot lines and clarification as to prior variances which created one buildable lot. House placement alternatives discussed, none found due to the irregular shape of the envelope and necessary placement of the septic. Photographs of the lot submitted for the record.

Nobody in the audience.

Ms. Lerner motioned and Ms. Smith seconded that the Board grant the variance to Article IV, Section 409.9-A 2 for relief from a fifty foot setback from wetlands to a twenty-five foot setback from wetlands for a permit for a single family home as requested. *Unanimous vote (5-0)*

Adjournment

Mr. Simmons and Ms. Smith seconded that acceptance of the minutes of the June 20, 2005 meeting be postponed until the next regular meeting. *Unanimous vote (5-0)*

Mr. Simmons moved and Ms. Smith seconded that the procedure of scheduling meetings for the 4th Tuesday of the month be suspended for the month of August, and the next regular meeting take place on Tuesday August 30, 2005 at 6pm in the Mary Herbert Room.

Unanimous vote (5-0)

Mr. Simmons moved and Ms. _____ seconded the motion to adjourn at _____.

Unanimous vote (5-0)

Respectfully submitted,

Carla Bonney

Recording Secretary