



Special Meeting Minutes

TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Monday, April 17, 2006 at 6:00pm

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

Attendance

Members present: (1) John Anthony Simmons, (2) Michele Peckham, (3) Jennifer Lerner, (4) Susan Smith and (5) Ted Turchan.

Alternates present: None

Staff present: Richard Mabey, Code Enforcement Officer and Wendy Chase, Recording Secretary.

Ms. Peckham convened the meeting at 6:35pm.

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

Ms. Peckham recessed the meeting at 6:36 to meet with Counsel.

Ms. Peckham reconvened the meeting at 7:02pm.

Ms. Peckham stated for the record that a copy of the Rules of Procedure were available for anyone to review.

Ms. Peckham swore in witnesses.

Ms. Chase stated that the meeting of April 17, 2006 was properly noticed in the Portsmouth Herald on April 6, 2006. It was also posted at the North Hampton Library, Town Clerk's Office, Town Office and Post Office. It was also posted on the Town's website.

The first order of business was to reorganize the Zoning Board. Ms. Peckham informed the Board that the Board of Selectmen reappointed John Anthony Simmons to the Zoning Board on April 10, 2006. Ms. Peckham requested nominations for Chairman from the Board.

Ms. Lerner nominated John Anthony Simmons as Chairman to the Zoning Board of Adjustment. Mr. Turchan seconded the nomination. The Board voted in favor of the nomination (4-0).

Mr. Simmons graciously accepted the position as Chairman to the Board.

Mr. Simmons nominated Michele Peckham as Vice Chairman to the Zoning Board of Adjustment, Mr. Turchan seconded the nomination. The Board voted in favor of the nomination (4-0).

Ms. Peckham graciously accepted the position as Vice Chairman to the Board.

Mr. Simmons thanked the Board members for their dedication and service to the town and looked forward to serving with them for another year.

Meeting Minutes

Ms. Smith moved and Mr. Turchan seconded the motion to accept the minutes of February 21, 2006. The vote was unanimous in favor of the motion (5-0).

Ms. Smith moved and Mr. Turchan seconded the motion to accept the minutes of March 28, 2006. The vote passed in favor of the motion (4-0). Mr. Simmons did not vote; he was not an official member of the board at that meeting.

Motion for rehearing of Case #2005:19; Cellco Partnership d/b/a Wireless, Lessee/Applicant.

Each Board member agreed that there was no new evidence regarding case #2005:19 and that they would stand by their original motion.

Mr. Simmons moved and Ms. Peckham seconded the motion to deny the rehearing request made by Cellco Partnership d/b/a Verizon Wireless. The vote was unanimous in favor of the motion (5-0).

2005:14 Gridcom/Cingular Wireless, 25 Research Drive, Westborough, MA 01582, requests a Variance (1) from Article IV, Section 415.3 to locate a 120-foot telecommunications tower on 22 Woodland Road; (2) from Article IV, Section 415.6.A.1 for relief from the fall-zone setback requirements; (3) from Article IV, Section 409.9.B for relief from the 100-foot wetland setback. Property location: 22 Woodland Road, R-2 zone district, Tax Map #002-050-000. This is a continuation of the March 28, 2006 meeting.

The Board went over the findings of fact beginning with the use variance.

Not contrary to public interest

Mr. Simmons stated that there is a boundary line issue with this case. The land abuts conservation land. Mr. Simmons feels that it may be contrary to public interest because of the boundary issue and the negative impact on the use of the abutting conservation property.

Ms. Peckham feels the applicant has proven that there is a gap in coverage in the proposed area.

Ms. Smith stated that she feels wireless coverage depends also on the wireless provider and that people should investigate different providers for better wireless service.

Unnecessary hardship exists

Ms. Peckham read over the three prongs under the unnecessary hardship variance criteria.

1. The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment.

Each member agreed that there was no uniqueness to the proposed property.

2. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property.

Ms. Peckham agreed that there needs to be wireless coverage and is not convinced that it can be provided by DAS. She feels that there is a fair relationship between the ordinance and the proposed property.

Mr. Turchan stated that the wireless ordinance is designed to make minimal impact to the town. When the ordinance was originally written it was at a time when the initial thrust for coverage was interstate coverage.

3. The variance would not injure the public or private rights of others.

Ms. Smith brought up safety issues regarding towers next to residential areas.

Ms. Peckham voiced concerns on safety issues because the proposed site abuts the conservation land where people go to hike, bird watch etc.

The Board concluded that safety is a main concern of theirs.

Consistent with the spirit of the ordinance:

Substantial justice will be done:

Mr. Simmons stated that the board should discuss the property boundary dispute matter.

Attorney Hilliard reminded the Board that the applicant has submitted an objection by email on March 28, 2006 to the information sent by Orr & Reno and Peter Loughlin on March 14, 2006 regarding the boundary line dispute.

Mr. Simmons stated that the Board voted at their February 21, 2006 meeting not to accept any new evidence on this case. (2005:14)

Ms. Smith stated that the boundary issue is not new evidence.

Mr. Simmons determined that the Board would not to consider any material regarding case 2005:14 that was sent to them after February 21, 2006 and therefore not be considered part of the record. The Board agreed.

Will not diminish surrounding properties

Mr. Turchan stated that the cell tower is too close to prime lots in town and feels it would diminish the value of these lot.

Mr. Simmons agreed and reminded the board that an actual property transaction was negatively affected in the Verizon cell tower case.

Ms. Lerner stated that in her opinion it would affect not only the high-end homes value but would devalue everything.

| 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 | |
|-------------------|------------|---------------------------------|----|-----------------------------|----|----------------------------------|----|----------------------------------|----|--|----|
| | | YES | NO | YES | NO | YES | NO | YES | NO | YES | NO |
| Board | Simmons | | X | | X | | X | | X | | |
| | Peckham | X | | | X | | X | | X | | |
| | Lerner | | X | | X | | X | | X | | |
| | Smith | | X | | X | | X | | X | | |
| | Turchan | | X | | X | | X | | X | | |
| | Woodworth | | | | | | | | | | |
| Alternates | Batchelder | | | | | | | | | | |
| | Goulet | | | | | | | | | | |

Attorney Hilliard requested that the Board make findings on the following questions regarding the Telecommunications Act of 1996, a federal law:

- Does your decision have the effect of prohibiting telecommunication service in the Town?
- Have you, in your decision, discriminated against any telecommunication service provider?
- Has the applicant adequately explored other reasonable alternatives to construction of the proposed facility?
- Is the Board convinced that this particular tower is the only solution available to provide service to the alleged gaps in coverage?

- Is the Board convinced that the siting of the proposed facility is the only solution available to provide service to the alleged gaps in coverage?

The Board members were unanimous in answering no to these questions.

Attorney Hilliard informed the Board that the Federal Telecommunications Act does not mandate seamless coverage.

It was agreed upon by the Board to have Attorney Hilliard draft a letter with the Boards findings and will continue the final deliberation and vote on this matter at the next Zoning Board meeting.

Attorney Loughlin asked if the Board would vote on the two area variances.

Mr. Simmons stated that since the use variance was denied the two area variances were moot points.

Attorney Field requested that the Board deny the two area variances on a procedural basis rather than a substantial basis.

Attorney Springer stated that he and the applicant do not consider the area variances moot. Attorney Springer stated that as far as he is concerned the final vote took place this evening and the 30-day appeal process begins tonight.

Mr. Simmons recessed the meeting at 8:30pm.

Mr. Simmons reconvened the meeting at 8:35pm.

Mr. Simmons moved and Ms. Smith seconded the motion to deny the variance requests for both the relief from the fall-zone setback requirement, Article IV, Section 415.6 A.1 and from Article IV, Section 409.0 for relief from the 100-foot wetland setback for the reasons that the applicant has not met their burden for establishing where the property boundary is and therefore the applicant by his own omission has left the Board in the position of not having a proper factual foundation in which to operate for considering substantively request for relief.

The vote was unanimous in favor of the motion (5-0).

Mr. Simmons moved and Ms. Peckham seconded the motion to continue final vote and deliberation on this matter on May 23, 2006, under old business, in the Mary Herbert Conference room at 6:00pm. The vote was unanimous in favor of the motion (5-0).

2006:07 – David MacArthur, 2 North Road, North Hampton, requests a Special Exception under Article V, Section 507 for Home Occupation to conduct swimming lessons June through August. Property location: 2 North Road, R-2 zone district, Tax map 017-107-004.

In attendance for this application:

Attorney Craig Salomon, representing the MacArthur family

David, Amy and Krissy MacArthur

Carolyn Duffy, Hampton

Donna Eichleser, Hampton

Ms. Lerner recused herself.

Ms. Peckham stated for the record that she has used and plans to use the services provided by the MacArthur family.

Mr. Turchan asked whether or not Ms. Peckham felt that she would be able to judge this case fairly?

Ms. Peckham replied, "Yes, I can be fair".

Mr. Salomon described to the Board the history of the business. The swimming lesson business has been in operation for the past seven years. Richard Mabey, Code Enforcement Officer, recently notified the owners that they would have to go before the Zoning Board of Adjustment and request a special exception to operate a home occupation.

Mr. Salomon stated that his client has addressed all concerns related to the swimming lesson business. He explained to the Board that historically patrons have parked along the roadside at Park Circle. This parking situation has been eliminated. Parking will remain on the premises. There will be a port-a-potty on site and trash receptacles. Everything will be accessible around the pool.

Mr. Simmons opened the public hearing at 9:30pm.

Mr. Simmons questioned the distance from the pool to the property line. As shown on the sketch provided, it is approximately 115 ft.

Ms. Lerner presented a letter signed by seven abutters to the MacArthur property. It was submitted into evidence as exhibit #1.

Ms. Lerner also presented photos of the property and Park Circle. They were submitted into evidence as exhibits #2 through #6.

The MacArthur's driveway provides enough room for one vehicle. The lessons will be spaced ten minutes apart to increase traffic flow.

Carolyn Duffy and Donna Eichleser, both residents of Hampton, spoke positively regarding the swimming lessons the MacArthur's provide.

Amy MacArthur stated that they offer a great service to the community.

Ms. Lerner stated that she was speaking as a representative of her neighborhood at Park Circle. She stated that she is not against the swimming lessons the MacArthurs offer. She voiced concerns of the parking along Park Circle and the children who accompany their parents during drop offs and pick ups that sometimes dart in the road or roam on people's property. She would prefer the business stay contained at 2 North Road.

Ms. Smith questioned whether or not Krissy MacArthur was CPR trained and certified. She stated that she was not.

If approved, Ms. Smith would like to make it a condition that swimming instructors must be CPR trained and certified and a copy of the certification must be kept on file at the Town Office.

Mr. Simmons closed the public hearing at 10:07pm.

Mr. Simmons moved and Mr. Turchan seconded the motion to grant the special exception with the following conditions:

- **The seasonal business to begin no earlier than the last day of the North Hampton School year and end no later than the third Friday in August.**
- **Four to six weeks of lessons divided into one and two week sessions.**
- **Hours of operation Monday through Friday from 8:45am to 5:00pm.**
- **Class sizes are two to six students per class; maximum class size to be six.**
- **Ages of students range from five to twelve years old.**
- **Classes are 40 minutes with 30 minutes instruction and 10 minutes free swim.**
- **Parents and/or Chaperones are allowed to remain on the premises during lessons.**
- **All parking to remain on site, which is delineated on the sketch provided by the applicant.**
- **A minimum of four trash receptacles shall be placed on the property as depicted on the sketch (exhibit #7).**
- **A natural barrier to be placed to enclose the open area on the Park Circle side of the property.**
- **Two CPR trained and certified employees on the property during lessons and current certification to remain on file with the town.**
- **A port-a-potty to remain on the premises and to be serviced once per week.**
- **Two CPR trained instructors present during swimming lessons.**
- **For levels one and two need a helper if more than three children in the pool.**
- **All activities to comply with Section 507 of the North Hampton Zoning Ordinance.**

The vote was unanimous in favor of the motion (4-0).

Mr. Turchan advised the applicant to try and resolves problems with his neighbors before they get out of control.

Mr. Simmons moved and Ms. Smith seconded the motion to adjourn at 10:25pm and all were in favor (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary