



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, May 23, 2006

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, Chairman, (2) Michele Peckham, Vice Chairman (3) Jennifer Lerner, (4) Susan Smith and (5) Ted Turchan.

Alternates present: Richard Batchelder

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

Mr. Simmons convened the meeting at 6:12pm.

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

Mr. Simmons informed all those present that the Rules of Procedure were available for review and that if anyone had questions to please raise their hand.

Mr. Simmons introduced Alternate member Richard Batchelder. Richard will be serving a three-year term. Mr. Simmons thanked him for serving the Town.

Mr. Simmons swore in Witnesses.

Ms. Chase reported that the meeting was properly noticed in the May 8, 2006 edition of the Portsmouth Herald and properly posted at the Town Clerk's Office, Town Office, Post Office, Library and on the Town's website.

The board reviewed the meeting minutes of April 17, 2006. Mr. Simmons recommended an emendation to the minutes.

Mr. Simmons moved and Ms. Peckham seconded the motion to amend the April 17, 2006 minutes with his recommendation.

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

Mr. Simmons moved and Ms. Peckham seconded the motion to accept the minutes of April 17, 2006 as amended.

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

2006:04 – Richard Skowronski, 142 Mill Road, North Hampton, NH 03862, requests a Variance from Article IV, Section 406 for relief from the minimum frontage requirement to create a single-lot subdivision. *Property location: Mill Road, zoning district R-2, M/L 012-047,064,065,067,068,069 & 070.*

Mr. Simmons read a letter from Rich Skowronski and Lela Hannah requesting a continuance for their case #2006:04 to be continued to the August 22, 2006 meeting.

Mr. Simmons asked the audience if there were anyone present to speak for or against the application.

Attorney Field spoke on behalf of his client, Mr. Skowronski, and explained to the board that he had advised his client to request a continuance to the August meeting.

Mr. Turchan moved and Ms. Peckham seconded the motion to continue case 2006:04 to the August 22, 2006 meeting.

Mr. Simmons stated for the record that he would have been concerned had there been abutters present to oppose the continuance request. He also stated that the extension doesn't appear to be detrimental to anyone.

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

2006:12 – Michael & Debra Fabiaschi, 266 South Road, North Hampton, NH 03862, requests a Variance from Article IV, Section 409 9.B.1 and Section 409 9. B. 2. for relief from the wetland setback.

Mr. Simmons read a letter from Attorney Timothy Phoenix requesting a continuance for his clients, Michael & Debra Fabiaschi, case# 2006:12, to the June 27, 2006 meeting.

Mr. Simmons moved and Ms. Lerner seconded the motion to grant the continuance for case #2006:12 to the June 27, 2006 meeting.

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 April 17, 2006 special ZBA meeting.

Mr. Simmons recessed the meeting at 6:40pm to meet with Counsel in a *non-meeting*.

Mr. Simmons reconvened the meeting at 6:45pm.

Mr. Simmons stated for the record that Attorney Springer objected to the Board going into a *non-meeting* with Attorney Hilliard. Mr. Simmons explained that a non-meeting is different from a meeting and non-public meeting. In a non-meeting the public is not entitled to be present, it is simply not a public event.

Attorney Springer stated that in his opinion if the board were discussing the draft decision with Counsel that it should be done in public because he feels it is prejudicial to the applicant and abutters not to hear what is going on.

The board reviewed the draft decision prepared by Attorney Hilliard. Mr. Simmons asked the board for comment and suggestions.

Ms. Smith recommended that more of a description on safety issues be added to the last paragraph under unnecessary hardship. Ms. Smith's suggestions included:

- It has been demonstrated that the towers do fall down
- It has been demonstrated that debris has fallen down from towers due to wind and elements
- North Hampton is close to a fault line
- Wind shears and hurricane weather

Mr. Simmons suggested adding in parentheses after safety issues (such as the tower falling down in its entirety and/or debris falling from wind, elements or natural disasters).

Ms. Peckham suggested adding the word *theoretically* before support on the last sentence of the first page.

**Mr. Simmons called a vote to Ms. Peckham's recommendation.
The amendment failed (1 yes, 4 no).**

**Mr. Simmons moved and Ms. Lerner seconded the motion to accept the decision letter as amended.
The vote was unanimous in favor of the motion (5-0).**

Attorney Hilliard used Ms. Chase's computer to make the necessary changes. Mr. Simmons signed the decision letter and Mr. Mabey made copies and distributed them to those who wished to obtain a copy.

2005:26 – E. Stevens, Inc. 69 Lafayette Road, North Hampton, NH 03862, requests a special exception Article V, Section 506.3 to replace existing manual changing reader board with an automatic changing reader board. *Property location: 69 Lafayette Road, I-B/R zone district, Tax Map #007-065-000*. This hearing is a continuation from the March 28, 2006 meeting.

Present for this application:

Gary Stevens

Mr. Simmons recused himself.

Ms. Peckham seated Mr. Batchelder for Mr. Simmons

Mr. Stevens requested that the original board be present to deliberate his case. Mr. Marston was seated on this case originally. It was determined that Mr. Marston's term does not expire until March 2008.

Mr. Stevens requested a continuance to the June 27, 2006 meeting. Ms. Chase will contact Mr. Marston.

Mr. Turchan moved and Ms. Smith seconded the motion to continue case 2005:26 to the June 27, 2006 meeting.

The vote passed in favor of the motion (4 yes, 0 no and 1 abstention). Ms. Lermer abstained.

2006:08 – Melinda Fuller, 23 New Road, North Hampton, NH 03862, requests a special exception, Section 509 for a home occupation to operate a family day care business. *Property location: 23 New Road, zoning district R-1, M/L 014-096.*

In attendance for this application:

Melinda Fuller

Mr. Simmons presented pictures and copies of letters from Ms. Fuller's abutters to Ms. Fuller for review. Ms. Fuller's case was tabled to give her ample time to review the information.

2006:09 – Rodney Booker, 46 Lafayette Terrace, North Hampton, NH 03862, requests a Variance from Article IV, Section 406.9 for relief from 50% acreage requirement for a backlot subdivision. *Property location: 69 Winnicut Road, zoning district R-3, M/L 023-007.*

Ms. Peckham requested that Mr. Mabey find a file similar to this case. Mr. Simmons tabled the case until the file was reviewed.

The board resumed discussion on Melinda Fuller's case, 2006:08.

Ms. Fuller explained to the board that she previously resided at 21 New Road and was granted a special exception to operate a child-care business out of her home with the following special conditions: The day care only operates from June 15th to September 15th with hours from 7:30am to 6:00pm.

Ms. Fuller now resides at 23 New Road and requests a special exception to operate a child-care business year round.

Ms. Fuller explained that she has three children of her own and wishes to baby-sit no more than four children. She further explained that her intentions are to be able to stay home with her children while providing income for her family.

Mr. Simmons opened the public hearing at 8:30pm.

Mr. Ralph Woekel of 20 Hobbs Road spoke in favor of Ms. Fuller's application. He stated that the Fullers are a good family. He feels that there would be no increase in traffic.

Mrs. Debbie Vasicole spoke in favor of Ms. Fuller's application stating that Ms. Fuller has a good family and is a wonderful caregiver.

Mr. Simmons swore in Ms. Ambrose as a Witness.

Ms. Ambrose spoke against Ms. Fuller's application. Ms. Ambrose stated that her main issues were safety issues. She stated that there are no street lights on new road, Ms. Fuller does not have a fence to prevent children from running into the road, the driveway does not have a turn around and there are coyotes, fisher cats and other animals in the nearby woods as well as small ponds.

Mrs. Cutt of 22 New Road went over NH State law, RSA 170-E. The law allows day care providers to care for up to three children in addition to the provider's own children on a regular basis with out retaining a state license. Regularly or on a regular basis means supervision and care up to and including seven days a week, whether paid or unpaid.

Mrs. Cutt felt that the information would be helpful to the residents on New Road.

Mrs. Swank of Hobbs Road asked whether or not the special exception for 21 New Road has been voided since Ms. Fuller does not live there anymore. Ms. Peckham answered that the special exception did run with the property.

Dorita Chretien of 16 New Road sent a letter to the board. Ms. Fuller was offered rebuttal on the letter.

Ms. Fuller stated the following:

1. There is no turn around in her driveway but has a perfect view of both sides of New Road at the end of her driveway.
2. There is ample room to fit four cars at once in her driveway and no one will have to park on New Road.
3. There is a large back yard where the play area will be. The play area will not be near woods.
4. Bathroom visits will be done as a group.
5. There will be no increased traffic or noise.

Ms. Fuller expressed concerns over the photos that were submitted by Ms. Chretien. She stated that the person taking the pictures of her old pool at 21 New Road would have had to be on her property to take them. Also there was a picture of her own child in her yard. She felt it bordered on harassment.

Mr. Simmons closed the public hearing at 9:05pm.

The board deliberated.

Ms. Smith stated that according to Section 509.3 of the Town Ordinances, a license from the bureau of Child Care Standards & Licensing, Division of Public Health Services of the N.H. Department of Health and Welfare is required.

Mr. Simmons read into the record Section 1001 of the Town Ordinances, which states that when the regulations made under the authority hereof differ from those prescribed by statute, ordinance or other regulation, that provision which imposes the greater restriction or the higher standard shall govern.

Ms. Smith voiced concerns of the area registered sex offenders. Ms. Fuller stated that she updates herself frequently regarding registered sex offenders.

Mr. Simmons stated that he has no doubt that Ms. Fuller is a good caregiver but is concerned with the traffic and the fact that there is no turn around in the driveway.

Mr. Simmons asked whether or not Ms. Fuller would be willing to add a turn around in her driveway.

Ms. Fuller responded by saying that technically cars are able to turn around in her driveway because of the width of it.

Ms. Peckham stated that in her own personal experience she does not have an issue with the driveway not having a turn around.

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

- Ms. Fuller obtains a license from the State of New Hampshire as required by the town ordinance, Section 509.3.
- The hours of operation to be between the hours of 8:00am and 5:30pm except for an emergency.

Mr. Turchan moved to amend the motion to change the hours of operation from 7:30am to 5:30pm, Ms. Peckham seconded the motion.

Mr. Simmons moved and Ms. Peckham seconded the motion to amend the first condition that not only obtains a license from the State but to also provide a copy prior to operation to the Building Inspector/Code Enforcement Officer for the file.

Mr. Simmons called the vote to the amended motion.

The vote was 2 yes, 3 no with Mr. Simmons, Ms. Lermer and Ms. Smith opposed.

Mr. Turchan stated that if the applicant met the criteria of the special exception that it must be granted by law.

Mr. Simmons stated that he felt it did not meet the criteria due to the traffic on New Road and absence of a turn around proposal for the driveway.

Ms. Fuller asked whether or not the vote was final. Mr. Simmons explained that it was not too late for a motion for reconsideration but the board would be reconsidering something that does not exist. Mr. Simmons stated that he would like to see a layout/plan of the driveway to show where the turn around would be.

Mr. Simmons stated that Ms. Fuller has every right to reapply with the new information. The vote on the application presented tonight is final.

Mr. Simmons reminded everyone that anyone has 30 days to appeal the decision.

Mr. Simmons recessed the meeting at 9:45pm.

Mr. Simmons reconvened the meeting at 9:59pm.

Mr. Simmons moved and Ms. Peckham seconded the motion to waive the time provision whereas not to consider new applications after 9:30pm and to continue with the rest of the agenda.

The vote passed in favor of the motion (4 yes, 0 no and 1 abstention). Ms. Peckham abstained.

The board resumed discussion on case #2006:09; Rodney Booker, property location 69 Winnicut Road.

Mr. Booker explained that he would like to build a single family home on the back portion of the property to be closer to his Mother. The property does not have the required acreage for a backlot subdivision.

Ms. Peckham read a letter from Attorney Ryan regarding a similar case where he stated that the applicant couldn't ask the Board to vary the terms of the grandfather provision (406:9).

Mr. Turchan asked whether or not the applicant had the proposed 40' access surveyed. Mr. Booker said he had not.

Mr. Mabey stated that the proposal would still need Planning Board approval.

Nellan Hiatt of 71 Winnicut Road stated that she had no issue with the proposed backlot subdivision but asked that the board limit the building to a single family home and not to allow a business at that location.

Ms. Szumita of 70 Winnicut Road stated that she had no problem with the proposed backlot subdivision.

Mr. Turchan moved and Ms. Smith seconded the motion to grant the Variance from Article IV, Section 406.9.

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

2006:10 – 22 Lafayette Road, LLC, PO Box 265, Hampton, NH 03842, requests an appeal of a Planning Board Decision, NH RSA 676:5 III, *property location: 22 Lafayette Road, North Hampton, zoning district I-B/R, M/L 003-099.*

In attendance for this application:

George Chobian, Civil Consultants

Attorney Steve Ells

Brian Messina, Manager Prowash Carwash

Mr. Chobian explained to the board that the Planning Board denied the Prowash Carwash site plan review he applied for at their April 3, 2006 meeting, citing that the application was incomplete because it proposes to create an additional use on non-conforming lot. The board did not cite a specific Zoning Ordinance Article and Section.

Mr. Chobian went through the Ordinances and thought that Article IV, Section 406.2 best pertained to the Planning Board's decision.

Attorney Pelech also cited Article V, Section 501, Non-conforming Uses.

Ms. Chase was directed to make copies of the Planning Board minutes of April 3, 2006. The board reviewed the minutes.

Mr. Simmons moved and Ms. Peckham seconded the motion that the finding of fact is that the record from the Planning Board's concern is an additional use on a non-conforming lot.

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

Mr. Simmons opened the public hearing at 11:00pm.

Mr. Simmons closed the public hearing at 11:01pm with no public comment.

Mr. Simmons moved and Ms. Smith seconded the motion that to the extent of Article IV, Section 406.2, if it is the section the Planning Board had in mind, that they erred in their decision and that the applicant meets the requirements.

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

Mr. Simmons moved and Ms. Smith seconded the motion that to the extent of Article V, Section 501.5 is what the Planning Board had in mind, that the Planning Board erred in their decision and that the applicant meets the requirements.

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

Ms. Smith left the meeting at 11:10pm.

Mr. Simmons seated Mr. Batchelder for Ms. Smith.

2006:11 – Michael Franzoso & Karen Backstrom 56 Post Road, North Hampton, NH 03862, requests a Variance from Article IV, Section 406 for relief from setback requirements and a Variance from Article V, Section 501. 5 to expand a structure on a non-conforming lot. *Property location: 56 Post Road, zoning district R-1, M/L 008-138.*

In attendance for this application:

Karen Backstrom

Attorney Bernard Pelech

Attorney Pelech distributed pictures of the Franzoso and Backstrom property. He explained that his applicants wish to expand their property and do not meet the setback requirement. He further explained that there is a strip of land that his applicants abut that no one has claimed ownership to.

Attorney Pelech also added to the record a petition from surrounding abutters in favor of the applicant's request to expand their structure.

Mr. Simmons opened the public hearing at 11:20pm.

Mr. Simmons closed the public hearing at 11:21pm.

Section 406 and Section 501.5

The board voted on the five criteria elements below for Case 2006:11- Michael Franzoso and Karen Backstrom, 56 Post 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	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
Board	Simmons	X		X		X		X		X	
	Peckham	X		X		X		X		X	
	Lermer	X		X		X		X		X	
	Smith										
	Turchan	X		X		X		X		X	

Alter- nates	Marston										
	Batchelder	X		X		X		X		X	
	Goulet										

Mr. Simmons moved and Ms. Lermer seconded the motion to grant the Variances from Article V, Section 406 and Article V, Section 501.5.

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

Mr. Simmons discussed a complaint from a member of the audience regarding accepting material during a meeting. The complainant recommended the board impose a cut off date for any material submitted to the board prior to a public meeting. Mr. Simmons asked the board if they would like to change the current rules of procedure to include a cut off date.

The board decided not to change the rules of procedure.

Mr. Turchan moved and Mr. Simmons seconded the motion to adjourn at 11:30pm.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary