



REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON ZONING BOARD OF ADJUSTMENT Tuesday, January 24, 2006 Elementary School Music Room

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) Ted Turchan; (4) Susan Smith and (5) Jennifer Lerner.

Alternates present: None

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

Mr. Simmons' son, John Anthony Simmons Jr., convened the meeting at 6:10pm.

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

John Anthony Simmons Jr., swore in Witnesses.

There were no preliminary matters to discuss.

Ms. Chase stated that the notice of this meeting was properly posted at the (1) Library, (2) Town Clerk's Office, (3) Post Office and (4) posted on the Town's web site. The meeting was also noticed in the January 8, 2006 edition of the Portsmouth Herald.

Ms. Peckham moved and Mr. Simmons seconded the motion to accept the special meeting minutes of January 10, 2006.

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

Old Business

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 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.* This hearing is a continuation from the November 22, 2005 meeting.

Mr. Simmons explained that at the November 22, 2005 meeting the Board made preliminary findings and fact regarding this case and Attorney Hilliard put those findings into draft form. The Board's sole purpose regarding this application was to entertain a motion to deny.

Attorney Hilliard explained that he had filled in the proper dates on the first page of the draft of the decision letter for Cellco Partnership.

Mr. Simmons stated that all of his comments had been addressed in the draft.

Ms. Peckham suggested the following changes:

- Add to the second sentence on the first page of the decision letter *including 20-30 witnesses and receipt of more than 100 exhibits*.
- Add the word *to* before the word justify on page 2, third sentence under Unnecessary Hardship.
- Add to page 3, second paragraph, second sentence, *that the prohibition of cellular towers in this district does not interfere with the reasonable use of this property for residential purposes*.
- Add at the end of page 3, last sentence, the word *Further*.
- Add on page 4, the date of the Planning Board approval of the DAS (November 7, 2005).
- Add a comma before substantial justice will be done on the second paragraph of page 4.

Ms. Peckham explained the reason for these suggested changes was that it is important to emphasize how very long and hard everyone has worked to come to this decision.

Mr. Simmons agreed that this decision letter is part of the history of this application.

The Board had no objections to Ms. Peckham's suggested changes to the decision.

Attorney Field asked the Board whether or not the findings and facts, rulings of law that Representatives of Mr. Kokernak had filed a request for at the November 22, 2005 meeting were incorporated in the decision minutes the Board is approving tonight. If they were not he respectfully requested that they be made a part of the decision.

Attorney Bassett confirmed that they did file for a request for rulings and findings, and stated that they are comfortable with how the Board wished to proceed.

Mr. Simmons stated that he is comfortable that the Board has created the proper record that covers what the Board's findings have been and will rest on that to be the record.

Mr. Simmons asked members of the Board if they were comfortable with what the Board has drafted and done so far. Each member of the Board agreed with the draft.

Mr. Simmons moved and Ms. Smith seconded the motion to accept the decision as drafted and as amended here this evening.

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

Attorney Hilliard made the amendments to the decision letter and Mr. Simmons signed it. Mr. Mabey handed out copies to those requesting one and Ms. Chase will send a copy by certified mail to Cellco Partnership, Verizon Wireless.

Mr. Simmons commented that the record was quite clear and advocated very well by both sides.

Ms. Peckham commended all the Attorneys involved for doing an outstanding job. Ms. Lerner agreed and stated that the Board would not have gotten through it as well as they had without the professionalism shown by all involved.

Ms. Smith stated that the Board took this application very seriously and weighed the evidence heavily and fairly and is quite comfortable with the decision made tonight.

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 November 22, 2005 meeting.

Mr. Simmons recused himself from this case.

Ms. Peckham informed the applicant, Mr. Stevens, that an Alternate was not present and that a four member Board would hear his case.

Mr. Stevens requested a continuation of his case. He would like a full Board present to consider his special exception request.

The next meeting is scheduled for February 28, 2006. It was determined that at least three Board Members would not be present for that meeting. Ms. Chase will contact Alternates to see if anyone can fill in.

**Mr. Turchan moved and Ms. Peckham seconded the motion to grant Mr. Stevens a continuance of case 2005:26 to the March 28, 2006 meeting.
The vote was unanimous in favor of the motion (4-0).**

Mr. Simmons rejoined the Board.

2006:1 – Rich Skowronski 142 Mill Road, North Hampton, NH 03862, Application for relief regarding North Hampton Planning Board decision to accept jurisdiction for Case #05:20-Map/Lot #12-048-000 and 12-066-000: 144 Mill Road, Leonard and Mary Saunders 4-lot subdivision application.

In attendance for this application were Mr. Skowronski of 142 Mill Road and Attorney Boldt, representing Mr. and Mrs. Saunders.

Mr. Skowronski explained to the Board that he was here this evening to exercise his right to appeal a Planning Board decision involving Planning Board Case #05:20, Leonard and Mary Saunders.

Case #05:20 was deliberated at the Planning Boards regularly scheduled meeting of November 7, 2005. The application consists of a proposed 4-lot subdivision and consolidation of lots 012-048 and 012-066. The results of that hearing were as follows:

- Mr. Salomon moved and Dr. Arena seconded the motion that the Board finds lots 012-048 and 012-066 have been merged de facto since 1974. The vote was unanimous in favor of the motion (7-0).
- Mr. Rineman moved and Dr. Arena seconded the motion to accept jurisdiction. The vote was unanimous in favor of the motion (7-0).

A copy of the Planning Board minutes of November 7, 2005 was submitted into the record as Exhibit A.

The Planning Board based their decision that the lots were merged de facto because the Saunders have received one tax bill for the two lots since at least 1974.

Mr. Skowronski's appeal before the Zoning Board is as follows:

- Request that the ZBA conclude that lots 012-048 and 012-066 have not been merged de facto.
- Request that the ZBA direct the Planning Board to reverse itself and decline jurisdiction over the Saunders case.
- Request that the ZBA direct the Planning Board to deny further consideration of the Saunders application and plans until the Saunders fully comply with all provisions of the Ordinance.
- Request that the ZBA require and direct the Saunders to follow proper procedure and first apply to the ZBA for a variance on all items in their application that do not conform to current laws and ordinances.
- Request that the ZBA grant the applicant other relief as may seem reasonable, equitable and just.

Mr. Skowronski stated that since the Saunders do not meet the criteria of Section 406.9 of the Zoning Ordinances that they should have to go before the Zoning Board to request a variance. He furthermore stated that he was denied a chance to speak at the Planning Board meeting. He also stated that he is aware that when accepting jurisdiction it is not a requirement of the Planning Board to allow public input.

Ms. Peckham reviewed the deeds and determined that the lots were put on one deed for convenience only. The lots were never combined legally. Ms. Peckham also stated that change of ownership does not change the status that it is a lot of record as of March 1992.

Mr. Turchan stated his opinion that the Planning Board was incorrect in their decision that the two lots were combined de facto. Ms. Peckham agreed.

Attorney Boldt, Representative of Mr. and Mrs. Saunders, passed out copies of plans. He explained to the Board that his application was reviewed by the Application Review Committee (ARC) where they suggested the applicant take the back lot out of lot 48 and merge lot 66 into it. The applicant had new plans drawn up. The Planning Board found the lots to be merged de facto and they accepted the application as complete.

Attorney Boldt stated the following reasons why he believes his client does not need to apply for a Variance:

- Lot 48 by itself is a lot of record.
- Under the back lot requirements Section 406.9, the lot shall be five acres or more in size with at least 215' of frontage. Lot 48 has 20 acres and 900' of frontage and the back lot is required to have at least 40' of frontage within 200' of the front lot line. Lot 66 has 59' of frontage and widens to 55+.'
- The back lot is required to have a minimum lot size, which is 50% greater than that required for the remaining lot. The minimum required is 2 acres. The back lot has 3.35 acres.

Attorney Boldt stated that jurisdiction was taken, but that the plan has not been approved yet.

Mr. Simmons asked Mr. Skowronski why he thought a Variance should be applied for.

Mr. Skowronski stated that the Saunders do not meet the criteria for 406.9 because there are no uplands on lot 48 and in order to subdivide and create a back lot, the initial lot must be buildable.

Mr. Skowronski also stated that the Planning Board did not just accept jurisdiction, they also voted to merge the two lots together de facto and he feels he should have had an opportunity to speak.

Mr. Simmons agreed. There should have been a public hearing for public input regarding the decision to merge the lots de facto.

Mr. Simmons recessed the meeting at 7:55pm.

Mr. Simmons reconvened the meeting at 8:04pm.

Attorney Boldt stated that in his opinion, his client meets all the requirements for Section 406.9.

Mr. Simmons stated that there are more requirements to meet other than Section 406.9. There are many requirements under the subdivision regulations that must also be met.

Attorney Field stated that the plan did not show a certified stamp from the wetlands survey. He stated that a certified Soil Scientist's stamp should appear on the plan, especially if there is such reliance on the wetlands.

Attorney Boldt stated that a HISS (High Intensity Soil Survey) was done and noted on C1 of the plan. The final revision of the plan will show the stamp as required by the Planning Board.

The first request made by Mr. Skowronski was for the Zoning Board to conclude that lots 012-048 and 012-066 have not been merged de facto.

Ms. Smith moved and Ms. Lerner seconded the motion that lots 012-048 and 012-066 have not been merged and that the only merging of lots was on the tax document.

Ms. Peckham amended the motion by stating that the Planning Board's findings that lots 012-048 and 012-066 were merged de facto was made in error.

Ms. Smith accepted the amendment.

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

Mr. Skowronski's second request to the ZBA is to direct the Planning Board to reverse itself and decline jurisdiction over the Saunderson's Case. Mr. Skowronski stated that the Planning Board's decision to accept jurisdiction was based on the lots being merged de facto.

Attorney Boldt stated that the acceptance of jurisdiction itself is fine due to the fact that Ms. Robinson, RPC Circuit Rider, stated that based on her review the plan meets the criteria of the Ordinance.

Mr. Simmons moved and Ms. Peckham seconded the motion to decline Mr. Skowronski's request that the Zoning Board direct the Planning Board to reverse the decision to accept jurisdiction of the Saunderson's application.

Mr. Simmons also stated for the record that he felt it was not the Zoning Board's proper province to direct the Planning Board when they can or cannot accept jurisdiction of an application. Ms. Peckham agreed.

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

Mr. Skowronski's third request was that the Zoning Board direct the Planning Board to deny further consideration of the Saunder's application and plans until the Saunders fully comply with all provisions of the Ordinance.

Ms. Smith stated that she felt the Zoning Board does not have the right to direct another Board to do anything. Mr. Simmons agreed.

Mr. Simmons moved and Ms. Smith seconded the motion to deny Mr. Skowronski's request to direct the Planning Board to deny further consideration of the Saunder's application. The vote was unanimous in favor of the motion (5-0).

Mr. Skowronski withdrew his request that the Zoning Board require and direct the Saunder's to follow proper procedure and first apply to the ZBA for a Variance on all items in their application that do not conform to current laws and ordinances.

Mr. Skowronski withdrew his request that the Zoning Board grant him other relief as may seem reasonable, equitable and just.

2006:2 – Frank and Karen McWilliams 227 Post Road, North Hampton, NH 03862, Map 022 Lot 014-004 requests a variance from Article V, Section 409.9 A.1 for relief of the 100' inland wetland buffer setback to accommodate a 15'x14' three season sunroom/porch.

Mr. McWilliams explained to the Board that the worst-case scenario would be that he would encroach 8' into the wetlands if able to build his three season porch. He has been before the Zoning Board in the past and was granted a Variance for relief of the 100' inland wetland buffer setback. The backside of his house encroaches 3-5' onto the wetlands.

Ms. Peckham voiced concerns regarding applicant coming before the Board applying for one Variance after another.

Mr. Turchan stated that it all depends on the grade for drainage purposes. He feels that it is located on a flat grade.

Mr. Turchan also stated that the property abuts I-95 where man-made wetlands were put in.

Mr. McWilliams stated that the porch would be built on sona-tubes enabling proper drainage.

Ms. Peckham requested Mr. Mabey's advice on the subject.

Mr. Mabey stated that Mr. McWilliams had proper drainage and that all the clearing that was done before the house was built had the most impact on the wetlands and adding a sunroom would not impact the wetlands further.

Ms. Lermer moved and Ms. Smith seconded the motion to grant the variance from Article V Section 409.9.A.1. for relief of the 100' inland wetland buffer setback.

Section 409.9.A.1

The Board voted on the five criteria elements below for Case 2006:2, Frank McWilliams, 227 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		Vote	Vote	Vote
		YES	N O	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	ABS
Board	Simmons	x		x		x		x		x				
	Peckham	x		x			x		x	x				
	Lermer	x		x		x		x		x				
	Smith	x		x		x		x		x				
	Turchan	x		x		x		x		x				
Alter-nates	Woodworth													
	Worrell													
	Marston													

The vote was in favor of the motion (4-1).

Mr. Simmons did not solicit public comment because there was no one from the public in attendance.

The Rules of Procedure were discussed.

Changes to the Rules of Procedure included:

- Change the word fourth to third on page 3.
- Add that the Board does not meet in the month of December.
- Remove the word midnight
- Put the accumulative record on the last page.

The Board will sign the updated version and Ms. Chase was directed to record the original with the Town Clerk.

**Mr. Turchan moved and Ms. Lermer seconded the motion to adjourn at 9:35pm.
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,
Wendy V. Chase
Recording Secretary