



REGULAR MEETING MINUTES

**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
June 27, 2006 at 6:00pm
Mary Herbert Conference 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 Lermer.

Alternates present: Paul Marston

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

Mr. Simmons convened the meeting at 6:13pm.

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

Mr. Simmons informed the audience that agendas and rules of procedure were available and if anyone had questions to please raise their hand.

Mr. Simmons swore in witnesses.

Mr. Simmons stated that the motions for rehearing regarding the Gridcom/Cingular case #2005:14, in his opinion, should be characterized, as old business therefore, should be moved to the beginning of the agenda. The board agreed.

Old Business

- 1. Motion for rehearing for case 2005:14, Gridcom/Cingular Wireless, submitted by Attorney Jonathan S. Springer of Bosen & Springer of Bosen & Springer, PLLC, for National Grid Communications, Inc.**

Mr. Simmons remarked that the board was to determine whether they were unlawful and unreasonable for the decision made on May 23, 2006 to deny application case #2005:14. The board deliberated amongst itself.

Ms. Lermer commented that the board did nothing unlawful or illegal.

Ms. Peckham stated that the board's actions did not cause an active prohibition.

Mr. Simmons referred to the amended motion for rehearing edited version submitted by Bosen & Springer, P.L.L.C., on page 4, paragraph 7C which stated *A similar application by Verizon, for a proposed site on Chapel Road, was recently denied by the Board, and in light of these two denials, it is clear that the Board will not approve any personal wireless service facility in this area of Town.* Mr. Simmons feels this is purely conjecture and the board needed to apply the ordinance that exists.

Mr. Turchan began to comment on the Selectmen's meeting held on June 26, 2006.

Mr. Simmons ruled that the board would not consider any information regarding wireless coverage outside of the ZBA meeting. Mr. Simmons stated that if anyone did discuss outside information, they would be ruled out of order and asked to leave the meeting.

Mr. Simmons again referred to the Bosen & Springer document on paragraph 8A, page 4. He stated that the comment in that paragraph they referred to was made by member Ted Turchan. The paragraph states *During the April 17, 2006 meeting one member of the board, who stated he was involved with the creation of the Wireless Overlay District, admitted that the purpose of the Wireless Overlay District was only to provide "interstate highway coverage".* Mr. Simmons stated that the statement in the paragraph oversimplified what Mr. Turchan actually meant. Mr. Turchan also stated at that meeting that the original ordinance is designed to make minimal impact to the town.

Mr. Simmons remarked that he took umbrage with paragraph 10, which states *The Board's denial also violates the TCA because it is not supported by substantial evidence contained in the written record.* Mr. Simmons stated that the Gridcom/Cingular record is quite substantial and the board has put many hours deliberating over it.

Ms. Smith stated for the record that she has done "drive-bys" in the North Hampton wireless "dead zone" on two separate occasions. Once when there were no leaves on the trees and again on June 27, 2006 when the leaves were in full bloom. Ms. Smith's wireless carrier is Cingular and she made at least 15 calls to her home answering machine and each call went through using her cell phone.

Mr. Simmons commented on paragraph 12, which stated the co-applicants established that the proposed property was uniquely situated in terms of location, size, and tree cover. He remarked that the property is not unique in terms of seeking a variance because all property in that area would need a variance for a cell tower.

Ms. Peckham moved and Ms. Smith seconded the motion to deny the amended motion for rehearing submitted June 20, 2006 by Attorney Jonathan Springer of Bosen & Springer on behalf of National Grid Communications, Inc.

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

- 2. Motion for rehearing for case 2005:14, Gridcom/Cingular Wireless, submitted by Attorney Lawrence M. Edelman of Pierce Atwood LLP, for North Hampton Coalition for Wireless Service, LLC.**

Ms. Peckham commented that there did not seem to be a difference in this request for rehearing other than it is requested on behalf of people from the general public.

Ms. Smith questioned how they could come before the board in a guise. The board doesn't know if the coalition is made up of North Hampton residents.

Attorney Hilliard advised the board to determine whether or not the North Hampton Coalition for Wireless Service, LLC has standing and then to proceed in dealing with the request for the motion for rehearing.

The board reviewed the names listed as members of the coalition. Mr. Simmons stated that it did not appear that anyone on the list was a direct abutter. Mr. Simmons also discussed that his belief is that the case law shows you do not necessarily have to be a direct abutter, but since the list of property owners does not prove how those listed are affected, the board has no way of knowing if those listed have standing.

Ms. Peckham moved and Ms. Smith seconded the motion to deny the application submitted by Attorney Edelman of Pierce Atwood, LLP on behalf of the North Hampton Coalition for Wireless Services, LLC based on the fact that they do not have standing to file a rehearing request.

The vote passed in favor of the motion (4 yes 0 no and 1 abstention). Mr. Simmons abstained.

Ms. Peckham and Ms. Smith agreed that the request is an opinion and does not have substance.

Ms. Peckham moved and Ms. Lermer seconded the motion to deny the application submitted by Attorney Edelman of Pierce Atwood, LLP on behalf of the North Hampton Coalition for Wireless Services, LLC for reconsideration based on the merits.

Mr. Simmons moved and Ms. Smith seconded a motion to amend. The amended motion is as follows: to deny the motion for rehearing with the understanding that the board already voted that the applicant lacks standing.

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

The May 23, 2006 meeting minutes were discussed.

Ms. Chase was advised to change the word emendation to recommendation on page 3, line 118.

Mr. Simmons moved and Ms. Smith seconded the motion to accept the minutes of May 23, 2006.

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

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 May 23, 2006 meeting.

Mr. Simmons recused himself from this application.

Ms. Peckham seated Mr. Marston for Mr. Simmons.

In attendance for the application:

Gary Stevens

Mr. Stevens went over points made at previous board meetings. Mr. Stevens' case has been continued each month since October 25, 2005.

A few of the points Mr. Stevens went over:

- Electronic Message Center (EMC) sign would be beneficial to him and the Town.
- Software controlled (the brightness can be controlled by the software)
- Letter from the Fire Chief in support of the sign
- Letter from the Police Chief in support of the sign
- E-mail from the Friends of the North Hampton Library in support of the sign
- The safety of EMC and that the Federal Government uses them

Ms. Peckham assigned the letter from the Fire Chief as exhibit E and the letter from the Police Chief as exhibit F and submitted them into the record.

Mr. Stevens stated that the sign will not blink and will have amber colored lights. It will be replacing the existing sign and will be the exact same size. He will also generate public service messages.

Ms. Peckham opened the public hearing at 7:25pm.

Mr. Peter Simmons voiced concerns that if the applicant is granted a special exception to install the Electronic Message Board other members of the community will follow suit and it would be hard pressed to deny anyone else in the future. The Town could end up with an abundance of EMCs.

Mr. Mabey explained that Mr. Steven's application falls under the old sign ordinance. The new sign ordinance, which passed at the March Town Meeting, would not allow an applicant to erect an Electronic Message Center. The applicant may appeal that decision to the Superior Court. A Planning Board decision on the issuance of a Conditional Use Permit regarding signage cannot be appealed to the Zoning Board of Adjustment.

Ms. Peckham closed the public hearing at 7:45pm.

Ms. Smith voiced concerns on safety issues. She also stated that message rotation set for every 90 seconds may cause problems.

Mr. Turchan remarked that the sign is vital to the businesses that will use it. It will help generate business.

Ms. Lermer voiced concerns on aesthetics and safety.

Mr. Marston stated that with the right restrictions to the operation of the sign it could be done in good taste and is beneficial to the Town.

Mr. Turchan moved and Mr. Marston seconded the motion to approve the special exception with the following conditions:

1. The color of the text and lights shall be the color of amber only;
2. The text and lights may not scroll, flash, or fade, symbols or graphics;
3. The message shall consist of text only, no symbols or graphics may be displayed on the board;
4. The text lettering shall be no smaller than 8 inches in height;

5. The text message shall be no longer than four (4) lines;
6. The text message shall not change any more frequently than every five (5) minutes;
7. The applicant must display a public service announcement no less than every thirty (30) minutes and such public service announcements shall be restricted to North Hampton community and School related public service announcements;
8. All lines in each text message must pertain to one subject matter at a time;
9. Reader board hours of operation shall be limited to: 7:00a.m. to 12:00 a.m. each day.

The vote passed in favor of the motion (3 yes 2 no and 0 abstentions). Ms. Smith and Ms. Lermer voted against.

Mr. Simmons rejoined the board.
Mr. Marston left the meeting.

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. Property Location: 266 South Road, zoning district R-2, M/L 011-017-000. This hearing is a continuation from May 23, 2006 meeting.

In attendance for this application:

Attorney R. Timothy Phoenix, Hoefle Phoenix & Gormley, PA
J. Corey Colwell, L.L.S., Ames MSC
Sherrie Davis, NH Soil Consultants, Inc.
J. Paul Demars, The Great Room Company
Michael & Debra Fabiaschi, owners

Attorney Phoenix reviewed the plan submitted to the board with the application. Attorney Phoenix explained that the addition would be built on pilings leaving the addition to hang over the wetlands. He further explained that it was the Fabiaschi's intention to build a master bedroom so that their living space would be contained to one floor to make it easier to live in their house in their "golden years".

Attorney Phoenix stated that the Conservation Commission at their February 14, 2006 meeting voted that they have no objections to the application for the Expedited Wetlands Application permit that was proposed. They went to the New Hampshire Department of Environmental Services, which issued the wetlands and non-site specific permit to them.

Ms. Lermer questioned where the septic system is located and Mr. Simmons asked how many bedrooms it was designed for.

Mr. Colwell pointed out the septic system on the plan and explained that the septic system was designed and approved for a five (5) bedroom home. With the proposed addition the total bedrooms would be three (3).

Mr. Demars designed the addition and explained that the pilings would be driven into the wetlands buffer area not the wetlands.

Mr. Simmons opened the public hearing at 9:00pm.
Mr. Simmons closed the public hearing at 9:01pm without public comment.

Mr. Simmons asked Ms. Davis what impact the addition would have on the wetlands. Ms. Davis explained that there would be minimal impact and that is why they requested a permit from NH DES. She stated that the function or the value of the wetlands area would not change; however the vegetation will change.

Ms. Smith asked how they would compensate for the water run-off from the proposed addition's roof since it will overhang in the wetlands area.

Mr. Demars explained that the way the gutters will be installed it would redirect the water into a dry area.

Mr. Simmons asked if any equipment to install the pilings would go into the wetlands. Mr. Demars answered, "no".

Mr. Simmons suggested other options to place the addition so that it would not be near the wetlands buffer.

Mr. Simmons commented on how unusual the proposal was and voiced concerns on setting a precedent if they grant the variance. He stated that he is not totally convinced that the wetlands would not be impacted. He also stated that there seems to be other options for the addition.

Attorney Phoenix explained that to do anything with this site a variance would have to be requested. The addition before the board was the most feasible for his clients.

Mr. Turchan moved and Ms. Lerner seconded the motion to approve case #2006:12 for the variance to Article IV, Section 409 9. B. 1. and Section 409 9. B. 2. for relief of the wetlands setbacks as presented to us in the exhibits.

Ms. Peckham stated that she shares Mr. Simmons concerns on putting anything in the wetlands but she felt that the fact that the applicant went through such great lengths to build above the wetlands and that the Conservation Commission passed it, those circumstances steered her to approve it.

Mr. Turchan added that the NH DES also passed it.

The vote passed in favor of the motion (4 yes 1 no and 0 abstentions). Mr. Simmons voted against.

New Business

2006:13 – William M. Gregsak, PE, P.O. Box 271, Chester, NH 03036 on behalf of property owners Janet O'Keefe and Claire Larrabee, requests a Variance from Article V., Section 501.2 to create a proposed lot line adjustment on non-conforming lots. Location: 8 & 10 Appledore Avenue, North Hampton, NH, zoning district R-2, M/L 002-026 & 027.

In attendance for this application:

William M. Gregsak, Gregsak Engineering, Inc.

Mr. & Mrs. Larrabee, Owners 10 Appledore Avenue

Mr. Gregsak explained that the two existing lots are non-conforming and with the proposed lot line adjustment the lots will remain non-conforming.

Mr. Gregsak explained that the adjustment would increase the Larrabee property to 33,386 square ft. and reduce the O’Keefe property to 27,930 square ft.

Ms. Peckham questioned what the driving force for the lot line adjustment.

Mr. Gregsak explained that the Larrabee property would have enough property to put a new leach field in case the current septic failed. The property would also meet the side and rear setbacks with the lot line adjustment. The O’Keefe property meets the rear and side setbacks before and after the lot line adjustment.

Mr. Turchan stated that the proposal is to make one non-conforming lot smaller and one non-conforming lot larger. The lot line would improve one of the non-conforming lots.

Mr. Simmons asked why the Planning Board advised them to go before the Zoning Board. Mr. Gregsak answered that it was because they were dealing with two non-conforming lots.

Mr. Simmons opened the public hearing at 9:50pm.

Mr. Turchan stated that it starts with two lots and ends with two lots and even with the division there is no potential to create anything other than two lots.

Mr. Simmons closed the public hearing at 10:00pm.

Ms. Peckham commented that the case could be analyzed under both the Boccia and the Simplex analysis.

The board agreed to use the Simplex analysis. The board voted on the five criteria elements below for case #2006:13 – Janet O’Keefe and Claire Larrabee, 8 & 10 Appledore Ave.

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
Chair	Simmons	X			X		X	X		X	
Vice Chair	Peckham	X		X		X		X		X	
	Lermer	X		X		X		X		X	
	Smith	X		X		X		X		X	
	Turchan	X		X		X		X		X	
Alternate	Marston										
Alternate	Batchelder										
Alternate	Goulet										

Ms. Smith moved and Ms. Lerner seconded to grant the variance request from Article V., Section 501.2 to create a lot line adjustment on two non-conforming lots that will remain non-conforming lots after the adjustment, case #2006:13, located at 8 & 10 Appledore Avenue, North Hampton, NH, zone district R-2, M/L 002-026 & 027.

The vote passed in favor of the motion (4 yes, 1 no and 0 abstentions). Mr. Simmons voted against.

Mr. Simmons entered the plan into the record as exhibit A.

Mr. Turchan amended the motion and Ms. Lerner seconded to include: granting the relief will be consistent with the lot lines and dimensions as shown on exhibit A.

The vote passed in favor of the amended motion (4 yes 1 no 0 abstentions). Mr. Simmons voted against.

Other Business

Ms. Smith recommended that the board allot certain amounts of time for each case. One hour for variance request applications and ½ hour to 45 minutes for special exception applications.

Mr. Mabey stated that the clock starts ticking when an applicant submits an application. The application must be heard within 30 days of submittal. He referenced RSA 676:7 II.

Ms. Smith suggested using the alternates and maybe scheduling two meetings per month.

Mr. Mabey will investigate further in regards to the hearing time lines and report back to the board.

A motion was made and seconded to adjourn at 10:30pm.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary