



REGULAR MEETING MINUTES

**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, September 26, 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: John Anthony Simmons, Chairman and Ted Turchan.

Members absent: Michele Peckham, Vice Chairman; Jennifer Lerner and Susan Smith

Alternates present: Paul Marston and Richard Batchelder

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

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

Mr. Simmons called the meeting to order at 6:06pm.

Ms. Chase reported that notice of the meeting was properly posted at the Town Office, Town Clerk's Office, Library, Post Office and the Town's website. The agenda was noticed in the September 12, 2006 edition of the Hampton Union.

Mr. Simmons seated Mr. Batchelder for Ms. Smith and Mr. Marston for Ms. Lerner.

Mr. Simmons swore in witnesses.

Approval of Minutes

Mr. Simmons moved and Mr. Turchan seconded the motion to table the approval of the August 22, 2006 meeting minutes until October 24, 2006 due to the absence of Ms. Peckham, Ms. Smith and Ms. Lerner.

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

New Business

2006:16 – Richard and Laura Simmons, 139 Woodland Road, North Hampton, NH 03862, requests a variance from Article IV, Section 406.2 to construct a home on a lot which has existed prior to March 5, 1974 but has not been in separate ownership. *Property location: 139 Woodland Road, zoning district R-2, M/L 012-007-000.*

In attendance for this application:

Attorney Bernard Pelech, Law Offices of Wholey & Pelech

Attorney Pelech represented Mr. and Mrs. Simmons (no relation to Chairman, John Anthony Simmons).

Due to the absence of three regular members, Mr. Simmons offered Attorney Pelech the option to continue case 2006:16 to next month or to proceed as scheduled.

Attorney Pelech chose to proceed. He also stated that he would be leaving the meeting at 6:30pm for a prior engagement. He explained that the owners of the property wish to build on the lot adjacent to their house lot. The house lot (Map 12 lot 6) and the adjacent lot (Map 12 lot 7) are both owned by Richard and Laura Simmons. Article IV, Section 406.2 prohibits them from erecting a structure on the adjacent lot and reads as follows: *Any lot of record existing at the effective date of this Ordinance and then held in separate ownership different from the ownership of adjoining lots may be used for the erection of a structure conforming to the use regulations of the district in which it is located, even though its area and width are less than the minimum requirements of this Ordinance.* *3/5/74. He handed out copies of deeds on the property and legal opinions from the Local Government Center and Attorneys Sanders and McDermott regarding Section 406.2 to the board members. He discussed the five criteria of the Simplex analysis and pointed out that the lot would not require a variance request if different owners owned the lots.

Mr. Simmons referred to Article IV, Section 406.2 as a problematic section of the Town's ordinances.

Mr. Turchan referred to the prior Cristo case where the ordinance was not upheld in court.

Mr. Pelech left the meeting at 6:35pm.

Mr. Simmons opened the public hearing at 6:40pm.

Ms. Kensler of 130 Woodland Road said that there is an existing barn and shed located on the second lot (12-7) and feels that adding another building would be "pushing it to the limit".

Priscilla Patrick of 410 South Road, Rye NH said she thought that the barn was a lot closer to the lot line than it appears on the plan. Her Daughter Shelly Patrick stated that the existing septic which services the house is located on the vacant lot. Mr. Simmons pointed out that there is an easement allowing the septic to be on that lot.

John Patrick of 410 South Road, Rye NH said he feels very strongly that the lot line on the Rye side is incorrect.

Mr. Simmons closed the public hearing at 6:50pm.

Section 406.2: The Board voted on the five criteria elements below for Case 2006:16 Richard and Laura Simmons, 139 Woodland Road.

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										
	Lermer										
	Smith										
	Turchan	x		x		x		x		x	
Alternate	Marston	x		x		x		x		x	
Alternate	Batchelder	x		x		x		x		x	

Jackie Walker of 132 Woodland asked what the maximum house size on that lot would be. Mr. Turchan answered that any size house could be built as long as it met the required setbacks.

Mr. Marston moved and Mr. Batchelder seconded the motion to grant the Variance from Article IV, Section 406.2 for case 2006:16.

The vote passed in favor of the motion (3 yes, 1 no and 0 abstentions). Mr. Simmons voted against.

Mr. Simmons noted for the record that the basis for his objection is that even though 406.2 is a really bad ordinance he tried to respect it while recognizing that it has huge problems. He also stated that his vote is not a comment on whether or not people should be able to build or not build on these lots.

Other Business

Mr. Simmons suggested he write a letter to the Planning Board on behalf of the Zoning Board of Adjustment requesting the Planning Board review and revise Section 406.2 to make it more comprehensible and have the revised ordinance ready for the March 2007 election. He asked for the board's vote of confidence to do so.

Mr. Marston suggested the letter to the Planning Board be worded carefully so that the end product isn't more confusing than the original.

Mr. Turchan suggested Mr. Simmons include the two legal opinions Mr. Pelech submitted into the correspondence to the Planning Board and also reference the court case (Cristo case) where 406.2 was challenged. Mr. Mabey will forward the information on that case to Mr. Simmons.

**Mr. Simmons moved and Mr. Turchan seconded the motion to adjourn at 7:15pm.
The vote was unanimous in favor of the motion (4-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary