



REGULAR MEETING MINUTES

**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT**
October 24, 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; Michele Peckham, Vice Chairman, Jennifer Lerner, Ted Turchan and Susan Smith

Alternates present: Richard Batchelder and Paul Marston

Staff present: Wendy Chase, Recording Secretary

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

Mr. Simmons called the meeting to order at 6:04pm.

Mr. Simmons reviewed and discussed with the board the following correspondence:

- 2006 LGC annual conference information – November 15-17, 2006
- Proposed 2007-2008 ZBA budget
- Supreme Court case Garrison v. Henniker. Mr. Simmons explained to the members that the case pertained to certain issues similar to issues in the cell tower deliberations especially regarding “uniqueness”. He further explained that he did not have a chance to review it thoroughly and if it is not the same case he thought than he would forward the correct case to each of them.
- Mr. Simmons informed the Board that the Mosquito Commission will hold an informational session on Wednesday, October 25, 2006 at 7:30pm at the North Hampton Elementary School.
- Letter to the Planning Board. Mr. Simmons drafted a letter on behalf of the Zoning Board of Adjustment to respectfully request that the Planning Board re-write Zoning Article IV, Section 406.2 so that it is more understandable. The members agreed to have the letter sent to the Planning Board. Mr. Simmons directed Ms. Chase to send the letter and to include the referenced enclosures.

Mr. Simmons swore in Witnesses.

Minutes

Mr. Simmons moved and Ms. Peckham seconded the motion to approve the minutes of August 22, 2006 as amended.

The motion passed in favor of the motion (4-0-1). Mr. Simmons, Ms. Peckham, Ms. Lerner and Mr. Turchan in favor, Mr. Marston abstained.

Mr. Simmons moved and Mr. Turchan seconded the motion to approve the minutes of September 26, 2006 as amended.

The vote was unanimous in favor of the motion (4-0). Mr. Simmons, Mr. Turchan, Mr. Marston and Mr. Batchelder in favor, 0 Opposed.

Old Business

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.* This case is continued from the August 22, 2006 meeting.

Mr. Simmons read a letter from Mr. Skowronski requesting to withdraw his ZBA request for relief application, case #2006:04, without prejudice.

Mr. Turchan moved and Ms. Lerner seconded to close case 2006:04 without prejudice.

The vote was unanimous, with all regular members voting.

A member of the audience commented that Ms. Peckham should not be voting on the matter since she had a conflict of interest. Ms. Peckham agreed and recused herself, remaining at the table.

Mr. Simmons seated Mr. Batchelder for Ms. Peckham.

The vote was unanimous in favor of the motion (5-0). Mr. Simmons, Mr. Turchan, Mr. Batchelder, Ms. Lerner and Ms. Smith in favor.

Ms. Peckham was reseated.

New Business

2006:16 – Luck Enterprises, 115 Lafayette Road, North Hampton, NH 03862, Owner, Edward Luck, requests a Variance from Article V, Section 501.2 to expand on a non-conforming use by replacing tents with permanent structures (cabins) at the campsite. *Property location: 115 Lafayette Road, zoning district I-B/R, M/L 013-071.*

Mr. Simmons read a letter from Mr. Luck requesting for a continuation to an unspecified future meeting.

Mr. Turchan moved and Mr. Simmons seconded the motion to continue Mr. Luck's application, case #2006:16 to the November 28, 2006 meeting.

Mr. Simmons directed Ms. Chase to contact Mr. Luck and ask that he request a continuance to a specific future meeting or withdraw the application and reapply at a later date. It was decided that the Board would do this once giving he applicant an opportunity to show up at next month's meeting and do so.

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

Mr. Simmons recused himself.
Ms. Peckham assumed the Chair.
Ms. Peckham seated Mr. Batchelder for Mr. Simmons.
Ms. Smith recused herself.
Ms. Peckham seated Mr. Marston for Ms. Smith.

Ms. Peckham explained to the Board that it was brought to her attention by Mr. Peter Simmons that an error was made on a decision letter written to him on July 27, 2004 in regards to case #2004:17. The Board was in receipt of a letter from Mr. Peter Simmons requesting the Board issue a corrective decision letter, which was granted on July 21, 2004. The special conditions listed on the original decision letter states: *The septic setback shall not be less than 30 feet from the wetland buffer.* The minutes of July 21, 2004 reflect the exact same condition.

Ms. Peckham informed the Board that she listened to the tape of the ZBA meeting of July 21, 2004, which clearly states that the word *buffer* was not part of the motion and also discovered, by listening to the tape, that a second condition was made but not included in the minutes as well as the decision letter. The second condition was made by John “Woody” Woodworth and states: *The septic system must be approved by the State of New Hampshire.*

The Board listened to the tape recording of July 21, 2004 on the motion made for Mr. Peter Simmons’ request for a variance to Article IV, Section 409.8.A. for relief from the 75 ft. setback from a wetland for the location of a septic system.

Mr. Peter Simmons requested that Ms. Peckham grant him the opportunity to present his case to the Board. Ms. Peckham reminded him that there was not a case to present therefore it was not noticed as such but rather slated as an issue under “other business” to be deliberated and determined by the Board. Mr. Simmons disagreed and insisted he present his case. Ms. Peckham let him speak.

Mr. Simmons introduced himself as Peter Simmons of 29 Ocean Boulevard, North Hampton and explained that the property owned by the Simmons Trust, property location, 68 Lovering Road is property held in a trust for his grandson. He explained that he came before the Zoning Board of Adjustment two years prior and requested three variances and they were all granted without conditions. He further stated that under the special conditions on his request for a variance to Article IV, Section 409.8.A. for relief from the 75 ft. setback from a wetland the word *buffer* was added after the word wetlands by mistake.

Mr. Simmons submitted the same letter, dated October 23, 2006, from three different ZBA members who were members of the Board on July 21, 2004. The letter states that the members voted to grant relief from the wetlands and the decision letter should be corrected to reflect that vote. Ms. Peckham read the letter and assigned exhibit numbers to each of the following documents:

- John Woodworth – Exhibit #1
- Jennifer Lermer – Exhibit #2
- Richard Luff – Exhibit #3
- Peter Simmons – Exhibit #4

Mr. Simmons referred to his original application stating his request was for relief from the 75 ft. setback from a wetland and nothing else. He requested a corrected letter by the Board so that he may continue with his project.

Ms. Peckham stated that Mr. Woodworth did add a condition that was excluded from the original decision letter and feels that the Board is obligated to include everything that was made in the motion, voted on and passed in the corrected decision letter. She further stated that it was brought to the Board's attention by Mr. Simmons that the original decision letter was incorrect and the Board had a chance to correct the decision letter completely.

Mr. Simmons stated that he disagreed that Mr. Woodworth's condition be added to the corrected decision letter because he did not ask for that on the original application and that it was a State matter and had nothing to do with the Town.

Ms. Peckham reminded Mr. Simmons that the Board has the right to add conditions to any Variance application that the Board approves.

Ms. Lerner requested the taped be played again because she wasn't quite sure if Mr. Woodworth made a comment or an actual condition to be added in the motion.

The Board listened to the tape recording of the meeting of July 21, 2004 again.

Mr. Turchan commented that the tape clearly states that Mr. Woodworth added the condition *The septic system must be approved by the State of New Hampshire*.

Mr. Simmons argued that Mr. Woodworth's condition not be added to the decision letter.

Ms. Peckham asked that Mr. Simmons not argue with her and reminded him that they were in Board deliberations.

Mr. Turchan moved and Ms. Peckham seconded the motion to remove the word *buffer* after the word *wetlands* from the special conditions and to also include Mr. Woodworth's part of the motion that *The septic system must be approved by the State of New Hampshire*. The vote was unanimous in favor of the motion (5-0).

Ms. Peckham informed Mr. Simmons that he would receive a corrected decision letter.

Mr. Simmons was reseated and resumed the Chair.

Mr. Simmons asked if there was any other business to come before the Board.

**A motion was made and seconded to adjourn at 6:45pm.
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary