



**REGULAR MEETING MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
February 20, 2007 at 6:00pm  
Mary Herbert Conference**

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*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; and Jennifer Lermer

**Alternates present:** Richard Batchelder

**Members Absent:** Ted Turchan and Susan Smith

**Staff present:** Richard Mabey, Building Inspector and Wendy Chase, Recording Secretary

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

Mr. Simmons called the meeting to order at 6:01pm.

Mr. Simmons discussed information distributed to each member regarding Supreme Court case, Robert L. Garrison v. Town of Henniker. The case provides specific guidance on how to determine when a property is unique for zoning purposes, and the type and amount of evidence required from applicants for a use variance. Mr. Simmons added that this case would have been helpful during the cell tower applications and will be helpful to the Board in the future.

Mr. Simmons commented on a letter from Attorney Robert Derosier to the Town regarding the non-suits filed by New Cingular and National Grid Com, Inc. The letter indicated that one reason the cell tower lawsuits were dropped was because of the good job done by the Zoning Board during deliberations. Mr. Simmons thanked the board members for a job well done.

Mr. Simmons discussed a letter sent by town resident Dorita Chretien. In Ms. Chretien's letter she asked the Board's opinion on whether it was a violation to display/advertise a business on a vehicle parked in a homeowner's driveway.

Mr. Mabey explained to the Board that a resident who may have a business/company name on their vehicle does not violate the sign ordinance. He further stated that he is aware of Ms. Chretien's complaint and informed her of his determination that there is no violation.

Mr. Simmons explained that there was a copy of the Rules and Procedures available to review.

Mr. Simmons Swore in Witnesses.

Ms. Chase stated that the meeting was properly noticed in the February 9, 2007 Hampton Union and posted at the Library, Post Office, Town Clerk's Office, Town Office and [www.northhampton-nh.gov](http://www.northhampton-nh.gov). Ms. Chase also informed the Board that the Post Office is under construction and with the new renovations there will no longer be a place to post public notices. (The law requires two public places).

It was noted for the record that the meeting was scheduled and noticed to take place at the North Hampton Elementary School in the music room. It was brought to the Board's attention that a School Board meeting was scheduled in the music room at 6:30. The Zoning Board meeting was moved to the Mary Herbert Conference room.

## Minutes

The minutes of October 24, 2006 were reviewed.

**Ms. Lerner moved and Ms. Peckham seconded the motion to accept the October 24, 2006 minutes. The vote was unanimous in favor of the motion (4-0).**

The minutes of November 28, 2006 were reviewed. Mr. Simmons stepped down from the Board. Ms. Peckham assumed the Chair.

**Ms. Lerner moved and Mr. Batchelder seconded the motion to accept the November 28, 2006 minutes. The vote was unanimous in favor of the motion (3-0).**

Mr. Simmons resumed the Chair. The minutes of January 23, 2007 were reviewed.

**Ms. Lerner moved and Mr. Batchelder seconded the motion to accept the January 23, 2007 minutes. The motion passed (3 yes, 0 opposed and 1 abstention). Ms. Peckham abstained.**

Mr. Simmons explained that Mr. Batchelder would assume Mr. Turchan's seat on the Board until Mr. Turchan's return to the Board.

## Old Business

**2007:01 – Electa N. Savage, 3 Boulters Cove, North Hampton, NH.** Applicant requests a Variance from Article IV, Section 409.8.A and 409.9.A.2. to permit construction of a new 26 x 44, 1 ½ story single-family dwelling and septic system within 75 feet of the wetlands soil. (The dwelling to be 19 feet and the septic system to be 55 feet from the wetlands soil). Property location: 4 Boulters Cove, zoning district R-2, M/L 001-014.

Present for this application:

Attorney Bernard Pelech, Law Offices of Wholey & Pelech

Attorney Pelech requested to table case 2007:01 indefinitely due to the fact that Electa Savage's variance request to the Little Boar's Head Zoning Board was denied at their February 13, 2007 ZBA meeting. Attorney Pelech explained that he would inform Ms. Chase whether his client would withdraw that application or request to continue to a future ZBA meeting.

**Ms. Peckham moved and Ms. Lerner seconded the motion that the applicant's request to postpone the application indefinitely for case 2007:01 – Electa Savage, be granted.**

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

**2007:02 – GFI, North Hampton, LLC**, 133 Pearl St Suite 400, Boston, MA. The applicants request a Variance from the provisions of Article III, Section 302 (25) and Article IV, Section 405 to allow pre-site built housing units in a manufactured housing park rather than manufactured housing units. Property location: 223 Lafayette Road, zoning district R-3 and I- B/R, M/L 021-001-000.

In attendance for this application:

Attorney Bernard Pelech, Law Offices of Wholey & Pelech

Ms. Peckham stated that she served as Counsel to the Planning Board regarding Greystone Village and asked Attorney Pelech for more information on the case before determining whether or not she had a conflict and would need to recuse herself from the case.

Attorney Pelech said that he had no problem with Ms. Peckham participating with this case because she only dealt with reviewing the restrictive and condominium covenants produced by Greystone for the Planning Board, she did not advise the Planning Board with regard to the merit of the site plan review application.

Mr. Simmons stated for the record that he was uncomfortable with Ms. Peckham sitting on the case due to her prior involvement as legal Counsel to the Planning Board for the Greystone site plan review application.

Attorney Pelech explained that his clients wished to substitute the approved manufactured homes at Greystone Village with modular homes because modular homes are better built, locally made and must comply with stricter building codes than manufactured homes. The modular home is also more marketable than the manufactured home. The main difference between the manufactured home and the modular home is that a manufactured home has a permanent chassis whereas a modular home does not.

Attorney Pelech further explained that his clients went before the Planning Board on November 6, 2006 with a change of use application requesting a change from a manufactured housing park to an adult modular home condominium. He read the following portion of the November 6, 2006 Planning Board minutes:

*Mr. Wilson stated that he did not believe that the Planning Board had jurisdiction to grant the applicant's request under the Town's current Zoning Ordinances. He further explained that Greystone Village was approved under the manufactured housing park provision and modular homes are considered standard homes, which require two-acre lots. If the applicant proposes a condominium ownership with multiple homes on one lot then that would require two acres for the first dwelling unit and one acre for each additional dwelling unit. Mr. Wilson reminded the applicant that the Board waived certain requirements in the manufactured housing regulations on the original approved application, one of which was to waive the requirements for a shared septic system to allow individual septic systems on each leased space with a condition that a professional management organization would own Greystone Village and enlist a certified property manager that would ensure that the septic systems would be maintained and to also enforce the age restriction requirement and other covenants.*

***Mr. Salomon moved and Dr. Arena seconded the motion to deny the Change of Use Application due to lack of jurisdiction to allow the conversion from a manufactured housing park to a modular housing development.***

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

Attorney Pelech stated that his clients have no plans to condominiumize the project at this time and that each unit has its own septic system.

Ms. Peckham explained that she felt conflicted and decided to recuse herself from case #2007:02.

Attorney Pelech requested to continue case 2007:02 to the March 27, 2007 meeting anticipating that there will be more than three members to deliberate the case. Mr. Simmons informed Attorney Pelech that due to the lack of alternates there might only be a four-member Board at the next meeting.

Attorney Pelech spoke on behalf of his client and said that they fully understand that if relief were granted by the Zoning Board that they would still need to go before the Planning Board for approval prior to any issuance of building permits by the Building Inspector.

Mr. Wilson explained that the Planning Board did both a site plan review and a subdivision review for the Greystone Village manufactured park. He explained that a number of waivers were granted based on what was proposed that were consistent with the regulations. Mr. Wilson opined that what is being applied for is a fundamental change in the application for both the site plan review and subdivision review and if the ZBA grants the relief then the applicant will be starting at ground zero.

Mr. Simmons said that he shares the opinion of Mr. Wilson regarding this matter. He also stated that the applicant has come before the ZBA with a variance request and not an appeal to a Planning Board decision

Mr. Simmons asked Mr. Wilson if it would be a good idea to hold a joint meeting on this application to avoid a lot of “back and forth” between the Boards.

Mr. Wilson opined that these are separable issues and with the Boards quasi-judicial functions, both Boards operate separately and doesn't feel a joint meeting would be necessary.

**Mr. Simmons moved and Ms. Lerner seconded the motion to grant the request to continue case 2007:02 to the March 27, 2007 meeting.  
The motion passed (3 in favor, 0 opposed).**

**2007:03 – Rich Skowronski and Leila Hanna, 142 Mill Road, North Hampton.** The applicants wish to appeal the decisions of (1) a member of the Planning Board, Mr. Wilson and (2) the Building Inspector, Mr. Richard Mabey made November 6, 2006, regarding Planning Board case 05:20, Leonard & Mary Saunders.

In attendance for this application:

Richard Skowronski, Applicant

Leila Hanna, Applicant

Attorney David Brown, Corriander & Brown, representing Rich Skowronski and Leila Hanna  
Lee, Mary and Jennifer Saunders, Abutters named in the appeal

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Attorney Chris Boldt, Tucker Donahue & Ciandella, representing Lee & Mary Saunders  
Phil Wilson, Chairman, Planning Board named in the appeal

Attorney Boldt submitted a motion to dismiss for lack of jurisdiction to the Board. The Board recessed at 6:55pm to read the document.

Ms. Peckham recused herself from case 2007:03.

Mr. Skowronski inquired whether or not he could request a continuance for a full-member board. Mr. Simmons explained that if the Board declined jurisdiction then essentially the case would not be before the Board, therefore he would not be able to request a continuance.

The Board reconvened at 7:05pm.

The Board took up the following question and Mr. Simmons asked for input from those involved with the case:

If the Board does not have jurisdiction than the Board should not be hearing the case, but does the Board need to allow the applicant to insist upon a full-member board to make the decision on whether or not they have jurisdiction? Mr. Simmons added that the law states that a three-member board is competent and considered a quorum.

Attorney Boldt said that if the Board rules in his favor on the motion to dismiss then it is finished, but if the Board is opposed to the motion to dismiss then the question goes to Mr. Skowronski whether or not to request for a continuance.

Attorney Brown opined that Mr. Skowronski's request for a continuance should be considered first.

The Board took up the question of jurisdiction.

**Ms. Lermer moved and Mr. Batchelder seconded the motion to continue case 2007:03 to the March 27, 2007 meeting for a four-member board.**

Mr. Simmons disagreed with the motion and stated that there is a reason the law states that a three-member board is competent and the board should continue.

**The motion failed (0 yes, 1 opposed, 1 abstention, 1 no vote). Mr. Simmons voted against, Ms. Lermer abstained and Mr. Batchelder did not vote.**

**Mr. Simmons moved and Ms. Lermer seconded the motion to take up the question of jurisdiction.**

**The vote was unanimous in favor of the motion (3 –0).**

Mr. Boldt went over the motion to dismiss that he submitted to the Board. Mr. Simmons asked if Attorney Brown had received a copy of the motion to dismiss. Attorney Brown replied that he had received a copy. Attorney Boldt continued.

- The Saunder's three-lot subdivision application, Case 06:05, was approved by the Planning Board on March 6, 2006 with six conditions.

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- The Planning Board Chairman signed the subdivision plan on August 7, 2006.
- Rich Skowronski and Leila Hanna wrote a letter to the Planning Board requesting the Board make all appropriate efforts to make sure the Saunders' plans are revised to change the location of the two driveway turnouts from the outside of each turn to the inside of each turn.
- The Skowronski/Hanna correspondence was discussed at the September 18, 2006 Planning Board Work Session meeting and the Board voted (5 yes, 0 opposed and 1 abstention) to authorize Chairman Wilson to draft a letter informing Mr. Skowronski that it was determined by the Board that the plan submitted by the Saunders fulfills the conditions of approval.
- Mr. Skowronski and Ms. Hanna wrote a letter to the Planning Board on October 13, 2006 requesting they reconsider their request to adjust the turnouts in the Saunders' subdivision.
- The Planning Board discussed Mr. Skowronski's & Ms. Hanna's request to reconsider at their November 6, 2006 meeting. The Board voted (5 yes, 0 no and 1 abstention) not to reconsider their earlier vote taken on September 18, 2006 because the Board determined that the plan submitted fulfills the conditions of approval.
- Mr. Skowronski and Ms. Hanna applied for an appeal form a decision of an Administrative Officer and Appeal of a Planning Board decision on December 5, 2006.

Attorney Boldt argued that Mr. Skowronski missed the 30-day deadline to appeal the September 18, 2006 Planning Board decision to Superior Court. He also added that if it were a zoning ordinance interpretation the Planning Board was dealing with then Mr. Skowronski also missed the 45-day appeal deadline to the Zoning Board. Attorney Boldt requested that the Board take up jurisdiction and rule in favor of the Motion to Dismiss he submitted. Attorney Boldt added that Mr. Skowronski and Ms. Hanna filed suit against the Planning Board on December 5, 2006 and he expects to file a Motion to Dismiss for that suit by March 8, 2007.

Mr. Skowronski explained that he did not attend the September 18<sup>th</sup> Work Session but did attend the November 6, 2006 meeting and feels it was the November 6, 2006 meeting that an administrative decision was made; therefore he based the appeal timeline on November 6, 2006 and applied before the ZBA on December 5, 2006, meeting the 30-day appeal deadline.

Attorney Brown said that he feels his client did file the appeal in a timely manner.

Mr. Simmons instructed that a copy of the September 18, 2006 Planning Board minutes be entered into the record.

Mr. Simmons requested a copy of the September Planning Board letter to Mr. Skowronski. The letter was not dated but Mr. Wilson estimated that the letter went out two or three days after the September 18, 2006 Planning Board meeting and Ms. Chase agreed.

Mr. Wilson explained that the issue at hand is whether or not the conditions of approval were met for the Saunders' three-lot subdivision plan. The Planning Board authorized Mr. Wilson to sign the plan when the conditions of approval were met. After review of the plan by Ms. Chase, Mr. Mabey and Mr. Wilson, it was determined that the conditions of approval were met and the plan was signed. Mr. Wilson further explained that the decision Mr. Skowronski and Ms. Hanna are appealing is whether the plan that was submitted on the Mylar fulfilled the conditions of approval.

He opined that the application of dates is irrelevant because it is a site plan approval decision by the Planning Board and it has nothing to do with the Zoning Ordinance, it is the site plan regulations and the ZBA has no jurisdiction over it. The only appeal Mr. Skowronski and Ms. Hanna could have made would have been to the Superior Court.

Attorney Boldt corrected Mr. Wilson that it was a subdivision decision and subdivision regulations were used not site plan regulations, which the ZBA also has no jurisdiction over. Attorney Boldt added that if it were an administrative decision than it would be based on the August 7, 2006 date when the actual plan was signed.

Mr. Wilson explained that Mr. Skowronski and Ms. Hanna were basically requesting that the Planning Board reconsider their decision at the September 18, 2006 meeting and recently the Planning Board has received legal opinion that there is no standard on which whether the Board can reconsider a decision like that.

Mr. Simmons questioned the applicant whether or not he had anything appeal able to the ZBA that occurred forty-five (45) days prior to the December 5, 2006 submission of the ZBA application.

Attorney Brown argued that the 30-day appeals process should have been contingent on the November 6, 2006 Planning Board meeting because it was a public meeting where a vote was taken and his client was able to participate in rather than the September 18, 2006 Planning Board Work Session meeting, which he felt was not a public hearing where his client Mr. Skowronski was not present to speak.

Mr. Simmons stated that the Planning Board Work Session meetings are public meetings.

After further discussion and deliberation Mr. Simmons made a motion.

**Mr. Simmons moved and Ms. Lermer seconded the motion to grant the Motion to Dismiss. The vote was unanimous in favor of the motion (3-0).**

Mr. Simmons went on to explain that he didn't believe a judiciable issue was before the Board, that the Planning Board granted a subdivision with conditions and that it was not an interpretation of the Zoning Ordinance therefore the Zoning Board did not have jurisdiction.

Mr. Simmons recessed the meeting at 8:20pm.  
Mr. Simmons reconvened the meeting at 8:36pm.

## **New Business**

**2007:04 – 29 Winnicut Road Development, LLC, 255 North Road#135, Chelmsford, MA 01824.** The applicant requests a Variance from Article IV, Section 406.9 to allow a back lot on a lot created after March 10, 1992. Property location: 29 Winnicut Road, North Hampton, zoning district R-3, M/L 022-024-000.

### In attendance for this application:

Attorney Pelech, Law Office of Wholey & Pelech

Christos Demogenes, 29 Winnicut Road Development, LLC  
Steve Oles, Ames MSC Engineering

Ms. Peckham recused herself from case 2007:04.

Attorney Pelech explained that he had just learned that a variance request couldn't be made on a date, therefore he would like to request that the case be continued to the March 27, 2007 meeting. After speaking with his client, Mr. Demogenes, he withdrew his request to continue.

Mr. Demogenes explained that he is fully aware of the date provision of a backlot where the lot must have been created prior to March 1992. He explained that he could have created the proposed lot six months ago along with his original subdivision but because he was in negotiations with the Town to sell a large portion of the property and close by December 31, 2006 he had to wait until now.

Steve Oles explained the history of the land.

- 66 acres parcel of land that Cedric Dustin and Frances Winch sold to Mr. Demogenes
- received approval from the Planning Board for a five-lot subdivision
- Initially wanted to create a six lot subdivision but would have problems with the then owners
- Mr. Demogenes sold 56 acres (lot 6) with a condition from North Hampton Forever to close the deal by December 31, 2006
- By abiding by the December 31, 2006 deadline it created a hardship

Mr. Wilson explained that North Hampton Forever was able to acquire 53 plus acres between two land transactions, one being from Mr. Demogenes. He explained that it is a unique piece of property with 1,000 ft of frontage on Buckskin Lane. He also pointed out that Mr. Demogenes could have subdivided the lot into two twenty-five acre lots but instead sold it to the Town and abided by the Town's condition to close at the end of the year and by doing so it created a hardship for the applicant to create the sixth lot.

Mr. Oles explained that Mr. Demogenes wished to slice lot five into two lots.

It was determined that the case would fall under the Boccia Variance standards rather than the Simplex Standards.

The Board went through the findings of facts under the Boccia Analysis and determined that

1. Granting the variance would not be contrary to the public interest.
2. Special conditions exist such that literal enforcement of the ordinance will result in unnecessary hardship.
3. Granting the variance is consistent with the spirit of the ordinance. Mr. Simmons explained that the reason for the backlot provision is that the voters did not want to see an abundance of homes built on lots that are five, six or seven acres each.
4. By granting the variance substantial justice will be done.
5. Granting the variance will not diminish the values of surrounding properties.



Mr. Simmons noted that Attorney Pelech had applied under the Simplex Analysis and asked if he had any objections to the Board deliberating under the Boccia Analysis. Attorney Pelech had no objection.

Mr. Simmons noted for the record that he is very uncomfortable setting a precedent that the Conservation Commission, North Hampton Forever or Planning Board can make deals expecting the ZBA to rubber stamp requests for relief for someone that's done business with the Town and done the Town a favor. Mr. Simmons added that he wanted to make it crystal clear that no property owner in the future can expect that their going to give land to a Town Committee/Commission and expect to automatically get relief from the Zoning Board.

Mr. Simmons stated that the applicant had met his burden.

**Mr. Simmons moved and Ms. Lerner seconded the motion to grant the subdivision to be as presented in the application for proposed lot five and proposed lot seven as depicted on the plan.**

**The vote was unanimous in favor of the motion (3-0).**

Mr. Mabey stated that the applicant would have to apply to the Planning Board for subdivision approval.

## **Other Business**

Ms. Chase was directed by the Chair to include Rules of Procedure under other business on all future ZBA agendas. Mr. Simmons said that he had proposed changes to make to the Rules of Procedure and read some of them. The topic will be discussed at the next meeting.

It was brought to the attention of the Board that the April 24, 2007 ZBA meeting falls on School vacation week.

**Mr. Simmons moved and Ms. Lerner seconded the motion to reschedule the April meeting to April 17, 2007.**

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

The Board discussed the member reappointment procedure. Mr. Simmons explained that anyone interested in becoming a member or wishing to be reappointed must first write a letter of interest to the Board of Selectmen. The Board usually seeks the ZBA Chairman's opinion but it is the Board of Selectmen that would approve appointments to the ZBA.

**Ms. Lerner moved and Mr. Simmons seconded the motion to adjourn at 9:10pm.**

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

Respectfully submitted,

Wendy V. Chase  
Recording Secretary