



REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON ZONING BOARD OF ADJUSTMENT Tuesday, April 17, 2007 at 6:00pm

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; Ted Turchan, Vice Chairman; Susan Smith, Jennifer Lermer and Richard Batchelder

Alternates present: Ron Dupuis

Members Absent: Jennifer Lermer

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

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

Mr. Simmons stated that there was a copy of the Rules of Procedure available for review.

Mr. Simmons swore in Witnesses.

Ms. Chase reported that tonight's meeting agenda was properly posted at the Library, Town Clerk's Office, Town Office and in the legal section of the April 9, 2007 Hampton Union newspaper.

Mr. Simmons moved and Ms. Smith seconded the motion to accept the meeting minutes of March 27, 2007.

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

The March 19, 2007 Joint meeting minutes were tabled for a quorum.

Signing the Rules of Procedure was tabled for a full regular member Board.

Old Business

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. This application is continued from the February 20, 2007 meeting.

In attendance for this application:
Attorney Bernard Pelech, Law Offices of Wholly & Pelech

Attorney Pelech informed the Board that the application for GFI, Case #2007:02 has been withdrawn.

2007:05 – Robert & Laura Milliken, 39 Chapel Road, North Hampton. The applicants request an appeal from a decision of an Administrative Officer regarding the erection of a building on a lot, which currently has no road frontage and request variances from (1) Article IV, Section 406.2 to allow a structure to be erected on an existing lot of record that has not been held in separate ownership from an adjoining lot and (2) from Article IV, Section 406.6 to allow the construction of a structure on a lot with no frontage on a town street. The Applicants in the alternative seek a variance from Article IV, Section 406.9 to allow a lot line relocation creating a back lot having frontage of 30 feet where 40 feet are required. The Applicants in the alternative seek a variance from Article IV, Section 406 to allow creation of a lot with 30 feet of frontage where 175 feet are required. Property location: 9 & 15 Maple Road, zoning district R-2, M/L 006-128, 129 & 130. This application is continued from the March 27, 2007 meeting.

In attendance for this application:
Attorney Bernard Pelech, Law Offices of Wholly & Pelech
J. Corey Coldwell, AMES MSC
Robert Milliken, Owner

Attorney Pelech began with the variance request from Article IV, Section 406. He went through the Boccia criteria:

Granting the variance will not be contrary to the public interest.

The total number of acres would be unchanged, the rear lot would be used for residential purposes, which is consistent with the zone in which it lies, it would not adversely affect the health safety or the general welfare of the community, or would the need for municipal services be substantially increased.

Special conditions exist with regard to the land, such that a literal enforcement of the Ordinance will result in unnecessary hardship.

Without an area variance, which the applicant seeks, no reasonable use can be made of the property.

Granting the variance is consistent with the spirit of the ordinance.

The Applicants proposal is to make tow of the three lots in question more conforming. The spirit and intent of the ordinance is to make nonconforming lots more conforming.

Granting the variance will result in substantial justice being done.

If the variance were denied the hardship upon the owner would be substantial. There is no benefit to the general public denying the requested variance.

Granting the variance will not diminish the value of surrounding properties.

Creating 30' of frontage will no way diminish surrounding property values. The lot line relocation being proposed by the Applicants will, in fact, enhance the value of the Dowd family lot.

Ms. Woodworth, an abutter to Mr. Milliken's property, stated that she had spoken with the Real Estate Agent who sold the subject property to Mr. Milliken and she confirmed that the property was sold as a single building lot and not two separate buildable lots. Ms. Woodworth opined that a building on the rear lot (128) would be a burden on the present farmland.

Heidi Wood, 31 Maple, an abutter to Mr. Milliken's property, opined that there was no hardship to the applicants. She further explained that she purchased her home mainly because of the rural feel and purchased an adjoining lot to preserve the natural raw land. She also stated that allowing the rear lot to be developed may not diminish the value of surrounding properties but it would not enhance it.

Attorney Pelech stated that the zoning district in which the rear lot sits is in the R-2 zone and read the definition as follows: *R-2 Medium Density District: The medium density district is designated for land which is to be used for medium to large single family dwellings with maximum yard space which will make possible the handling of the individual family's water and sewage disposal needs where central water and municipal facilities are not now available or where the immediate installation of these facilities is now immediately feasible.* Attorney Pelech opined that what the Applicants are proposing is reasonable.

Mr. Simmons stated that he would be uncomfortable granting a variance that would allow a lot to have 30-feet of frontage where 175-feet is required.

Mr. Batchelder agreed and said it was a substantial reduction in frontage.

Mr. Dupuis opined that Mr. Milliken doesn't appear to be a developer and is willing to work with the abutters.

Ms. Smith said that she sat on the Board when Ms. Woodworth came before them requesting a variance to create a back lot and voted against it. She further stated that she feels creating back lots goes against the spirit of the ordinance. Ms. Smith opined that the variance should not be granted because there is no hardship on the Applicants.

Mr. Simmons questioned whether or not the plan could be adjusted to create 70.76 feet of frontage to the rear lot. Mr. Coldwell thought it to be possible.

Mr. Simmons recessed the meeting at 8:00pm.
Mr. Simmons reconvened the meeting at 8:05pm.

Mr. Coldwell suggested that the lot line be adjusted to allow 70-feet of frontage and narrow down to 30-feet.

Mr. Batchelder asked the applicant if it would be possible to ask Mr. Dowd to move his septic and adjust the proposed lot line relocation to allow more frontage on Mr. Milliken's lot. Mr. Milliken said that he did suggest it but it is impossible because there is no other place on the Dowd lot that a septic system could be installed.

Mr. Turchan moved and Mr. Dupuis seconded the motion to grant a variance to Article IV, Section 406 with the following conditions: (1) allow 70.76-feet of frontage to narrow down to 40-feet to the rear lot to prohibit a road to be constructed.

Mr. Simmons made a friendly amendment by adding the following conditions: (3) the rear lot (6-128) cannot be used to enhance any future development and (4) no future variances will be granted on the rear lot (6-128). Mr. Batchelder seconded the motion to amend. The motion to amend passed (3 yes, 1 no and 1 abstention). Mr. Dupuis opposed and Ms. Smith abstained.

Condition number 5 was added to the motion by adding that the tree buffer will remain as currently shown on the plan.

406

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
	Simmons	x			x		x	x		x	
	Turchan	x		x		x		x		x	
	Lermer										
	Smith		x		x		x		x	x	
	Batchelder	x			x		x		x	x	
Alternate	Marston										
Alternate	Lariviere										
Alternate	Dupuis	x		x		x		x		x	

The vote failed (2 in favor and 3 opposed). Mr. Simmons, Ms. Smith and Mr. Batchelder opposed.

Mr. Simmons announced that if any other applicant before the Board would like to continue to the May 22, 2007 meeting due to the late hour they would be granted permission without prejudice.

Mr. Turchan made a motion and Mr. Simmons seconded to continue cases 2007:09 – James & Susan Buchanan and 2008:10 – Paul & Phyllis Lamb to the May 22, 2007 meeting. The vote was unanimous in favor of the motion (5-0).

Attorney Pelech proceeded with the application under the request for a variance to 406.2. He stated that the request would stand alone without the request for 406.6 because the proposed rear lot would have frontage of 30-feet. He requested a ruling from the Chairman.

Chairman Simmons ruled without objection that a lot with 30-feet of frontage would not need relief from Article IV, Section 406.6.

It was decided by the Board and Attorney Pelech to discuss the two-part administrative appeal. Attorney Pelech discussed the first part of the appeal where he thought the Building Inspector determined the lot line relocation was in fact a subdivision. A brief discussion ensued.

Mr. Simmons moved and Ms. Smith seconded the motion that the Building Inspector's interpretation that this application is a subdivision is erroneous. The vote was unanimous in favor of the motion (5-0).

Attorney Pelech commented on the second part of the administrative appeal is that the Building Inspector determined that once lot line relocation is proposed, the lots lose their status as a lot of record. The applicants belief that until such time as the lot line relocation is actually approved by the Planning Board, the lots do not lose their status as lots of record.

Mr. Simmons moved and Ms. Smith seconded the motion that to the extent that this application creates a lot with 30-feet of frontage that lot did not exist in 1974 and therefore is not a lot of record existing at the effective date of this ordinance and then held in separate ownership (ordinance dated March 5, 1974). The vote passed (4 yes, 0 opposed and 1 abstention). Mr. Turchan abstained.

Mr. Turchan explained the reasoning behind the back lot subdivision ordinance. He was on the Planning Board when it was designed and said that the reason for the 40-foot frontage requirement to a back lot is because they wanted to keep it under 50-feet because 50-feet of width would allow a road to be built and the Board wanted to avoid that.

The Board went back to the requests for variances to 406.2 and 406.6.

Ms. Heidi Wood commented that whatever the Board decides would set a precedent.

Mr. Turchan disagreed and said that each application stands on its own. The only time a precedent is set is when it involves a court ruling.

Mr. Simmons stated that he would take public comment from the previous administrative appeal ruling.

Mr. Turchan moved and Mr. Dupuis seconded the motion to grant the variance request from Article IV, Section 406.2.

Mr. Simmons questioned whether or not the applicant would have to come back to the ZBA for a variance after the applicant applies to the Planning Board for a lot line adjustment because they would not have 175-feet of frontage.

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Mr. Dupuis commented that the Board could go all night with “what if” scenarios and suggested that the Board vote on the motion made.

406.2 and 406.6

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
	Simmons	x		x			x	x		x	
	Turchan	x		x		x		x		x	
	Lermer										
	Smith	x			x		x		x	x	
	Batchelder	x			x		x		x	x	
Alternate	Marston										
Alternate	Lariviere										
Alternate	Dupuis	x		x		x		x		x	

The vote failed (2 yes, 3 opposed).

Attorney Pelech went over the request from Article IV, Section 406.9. He opined that it was a dimensional variance but could argue both ways.

The Board recommended that the Mr. Coldwell add a 40-foot vegetation buffer to the plan and adjust the lot line so that there would be 40-feet of frontage for the rear lot. He was also advised by the Chair to leave the amended plan with Ms. Chase for the permanent record.

Mr. Turchan moved and Mr. Dupuis seconded the motion to grant the variance request from Article IV, Section 406.9 with the following conditions: (1) the frontage to the back lot, Tax Map 006 Lot 128, shall be 40-feet as depicted on the plan (amended by the Applicant’s Engineer, J. Corey Coldwell) and (2) that there shall be a 40-foot vegetation as depicted on the plan (added by the Applicant’s Engineer, J. Corey Coldwell).

406.9

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
	Simmons	x		x		x		x		x	
	Turchan	x		x		x		x		x	
	Lermer										
	Smith	x			x	x			x	x	
	Batchelder	x			x	x		x		x	
Alternate	Marston										
Alternate	Lariviere										
Alternate	Dupuis	x		x		x		x		x	

The vote passed (3 yes, 2 opposed). Ms. Smith and Mr. Batchelder opposed.

New Business

Mr. Turchan moved and Mr. Dupuis seconded the motion to continue cases 2007:07 – Amanda Hartford and 2007:08 – Mary Reeves to the May 22, 2007 meeting. The vote was unanimous in favor of the motion (5-0).

A motion was made and seconded to adjourn at 10:45pm. The vote was unanimous in favor of the motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary