

REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON ZONING BOARD OF ADJUSTMENT Tuesday, May 22, 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, and Richard Batchelder

Alternates present: Ron Dupuis

Members Absent: Jennifer Lerner

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

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

Mr. Simmons convened the meeting at 6:12pm. Mr. Simmons seated Mr. Dupuis for Ms. Lerner.

Mr. Simmons stated that there was a copy of the rules of procedure available for anyone to review.

Mr. Simmons swore in witnesses.

Mr. Simmons stated that the agenda was posted in the Hampton Union on May 8, 2007 and posted at the Library, Town Office and Town Clerk's office. Mr. Simmons added that notices would no longer be posted at the Post Office.

Minutes

Mr. Simmons moved and Mr. Turchan seconded the motion to approve the Planning Board and Zoning Board joint meeting minutes of March 19, 2007. The motion carried unanimously by members present at the March 19, 2007 meeting (2-0).

Mr. Simmons moved and Mr. Dupuis seconded the motion to approve the meeting minutes of April 17, 2007. The vote was unanimous in favor of the motion (5-0).

Old Business

1. 2007:07 – Amanda Hartford, 26 Mill Road, North Hampton. The applicant requests a variance from Article IV, Section 406 to construct a 10-foot addition to the back of the existing dwelling 12-feet from the side yard setback where 25-feet is required. Property location: 26 Mill Road, zoning district R-1, M/L 003-067-000. This case is continued from the April 17, 2007 meeting.

Ms. Chase informed the Board that Ms. Amanda Hartford verbally withdrew her application, case # 2007:07 on May 21, 2007.

Mr. Simmons moved and Mr. Dupuis seconded the motion that pending written confirmation from the applicant that case #2007:07 be withdrawn per the applicant's request and that any further action to be taken on this case would result in a new completed application including fees.

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

2. 2007:08 - Mary Reeves, 20 Ross Road, Durham, NH 03824. The applicant requests a variance from Article IV, Section 406 to construct an addition to the existing dwelling 6-feet from the side yard setback where 30 feet is required. Property location: 15 Atlantic Ave., zoning district R-2, M/L 001-107-000. This case is continued from the April 17, 2007 meeting.

Present for this application:

Kenneth Reeves, Applicant/Owner

Kimberly Reeves, Applicant

The Applicants propose to reconstruct the house at 15 Atlantic Avenue, which is currently vacant to accommodate newly planned living arrangements. The property lies within the Little Boars Head District. Mr. Reeves applied for and was granted a variance from the Little Boars Head Village District Zoning Board of Adjustment on March 27, 2007. Mr. Reeves explained that the reconstruction would result in reducing the current encroachment into the side yard setback from eleven feet to six feet.

Mr. Simmons opened the meeting to public comment at 6:34pm.

Mr. Simmons closed the public meeting at 6:35 without public comment.

Mr. Simmons polled the members and asked if any member felt that any one of the five criteria of the findings of fact were not met regarding case #2007:08. The members agreed that the five elements were met.

Mr. Simmons moved and Mr. Dupuis seconded the motion that unanimously the Board finds that the five criteria have been met for case #2007:08.

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

Mr. Simmons moved and Mr. Dupuis seconded the motion to approve the variance request from Section 406 with the following conditions:

1. The construction to be completed as shown on the plan in the application.
2. The easterly corner of the building shall not be closer than 24-feet from the property line.
3. No more relief regarding setbacks on this property may be requested or granted.

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

3. 2007:09 - James and Susan Buchanan, 27 Birch Road, North Hampton. The applicants request a variance from Section IV, Section 406 to "square off" an existing house 21-feet from the side yard setback where 25-feet is required. Property location: 27 Birch Road, zoning district R-1, M/L 017-015-000. This case is continued from the April 17, 2007 meeting.

In attendance for this application:

James Buchanan, Applicant/Owner

Susan Buchanan, Applicant/Owner

Mr. Simmons wanted to disclose for the record that he did not vote for Mrs. Buchanan as Town Clerk/Tax Collector but rather he voted for a family friend and assured the Buchanans that there was no ill will on his part and gave them the opportunity to request that he recuse himself from the case. Mr. Simmons further explained that if the Buchanans opted that he recuse himself then there would be a four member Board to hear their case and although a three member Board is legal to vote on a case they would be entitled to request a five member Board. Mr. and Mrs. Buchanan stated that they had no concerns with Mr. Simmons hearing their case.

Mr. Buchanan explained to the Board that he proposes an addition to their existing house encroaching within 21-feet of the side setbacks where 25-feet is required. They also propose to add a "farmers porch" to the front of the house. Mr. Buchanan submitted two letters of support, which Mr. Simmons read into the record. The letters were from Janet Sanborn of 29 Woodknoll Drive and Maria Gehrmann-Dockery of 33 Birch Road, both abutters to the Buchanans.

Mr. Simmons opened the meeting to public comment.

Mr. Perham, 21 Woodridge Lane, North Hampton said that he had several concerns and did speak to Mr. and Mrs. Buchanan regarding them and felt that most of them were addressed. Mr. Perham asked the Board what affect if any would granting the variance for the Buchanans have on future variance requests from himself. Mr. Simmons explained that he would never be able to predict what decisions a future Board would make and that each case is based on its own merits.

Mr. Turchan moved and Ms. Smith seconded the motion that the five criteria of the findings of fact were met.

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

Mr. Turchan moved and Ms. Smith seconded the motion to grant the variance request for case #2007:09 and allow an addition on the south side of the house 21-feet from the side yard setback where 25-feet is required. The vote was unanimous in favor of the motion (5-0).

Mr. Simmons reminded Mr. & Mrs. Buchanan of the 30-day appeal period.

4. 2007:10 – Paul & Phyllis Lamb, 129 Atlantic Ave, North Hampton. The applicants request a variance from Article IV, Section 406.9 to allow a back lot subdivision with 32.74 feet of frontage where 40-feet is required. Property location: 129 Atlantic Ave, zoning district R-2, M/L 006-083-000. This case is continued from the April 17, 2007 meeting.

In attendance for this application:

Attorney Bernard Pelech, Law Office of Wholly & Pelech
Paul Lamb, Applicant/Owner
Phyllis Lamb, Applicant/Owner

Attorney Pelech explained that the Applicants were requesting a variance to the frontage requirement on a backlot subdivision. They have frontage of 32.74-feet where 40-feet is required. He further explained that there is an existing right-of-way on the westerly side of the property and is an active driveway and will serve the back lot as the driveway from Atlantic Avenue to the back lot.

Mr. Lamb explained that he and his wife wish to continue living on their property in North Hampton and build a smaller more manageable home instead of their current 4,000 square feet home, which has become burdensome in upkeep and maintenance.

Mr. Lamb submitted a letter of support from Mr. Charles Baron of 129A Atlantic Ave.

Chairman Simmons swore in Mr. Wilson.

Mr. Wilson pointed out that if the width of the driveway was not 40-feet 200 yards from the front lot line the applicants would need to request a variance from that provision also, which would be 406.9.C.

It was determined that the proposed driveway was not 40-feet 200 yards from the front lot line but it was determined by the Board that the request for a variance from Article IV, Section 406.9 covers the provisions 406.9.C.

Mr. Wilson also questioned what kind of wetlands crossing would be required to be able to cross over Little River. Mr. Lamb said that the State inspected the property and told the Lambs that there would be no permits required by the State because the crossing would be from uplands to uplands. Mr. Lamb explained that the existing bridge once accommodated vehicular traffic but has deteriorated over the years. Mr. Lamb further explained that he had an engineer inspect the bridge and they have suggested that a wooden laminated bridge be installed to allow vehicles and emergency vehicles to pass.

Mr. Simmons opened the meeting to public comments at 7:15pm.

Mr. Simmons closed the public meeting at 7:16pm without public comment.

Mr. Mabey stated that the applicant would still need to apply for a subdivision with the Planning Board. The applicant will have to produce all required State and local approvals with a subdivision application.

Mr. Dupuis moved and Mr. Turchan seconded that motion that the five elements of the findings of fact have been met. The vote was unanimous in favor of the motion (5-0).

Mr. Simmons moved and Mr. Turchan seconded the motion to approve the variance request from Section 406.9 subject to all proper approvals from the Town, State and Building Inspector in regards to all other issues remaining on the property.

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

New Business

1. 2007:11 – Ed Stevens and Cathy Pascoe, 19 Chapel Road, North Hampton. The applicants request a variance from Article IV, Section 406 and Article IV, Section 409.9.B.1 to replace an existing 20' x 12' x 13' garage with a 22' x 22' x 16' garage encroaching on the side and wetlands setbacks. Property location: 19 Chapel Road, zoning district R-2, M/L 005-025.

In attendance for this application:

Ed Stevens, Applicant/Owner

Cathy Pascoe, Applicant/Owner

Mr. Stevens explained that he proposes to replace his existing one-car garage to a two-car garage and does not meet the required side yard setback or the 50-foot wetlands setback. He further explained that his property lies within the Little Boars Head Village District and was granted approval for a variance from the Little Boars Head Zoning Board of Adjustment on May 1, 2007 from Section VII A 1 of the Little Boar's Head Zoning Ordinance.

Mr. Simmons opened the meeting for public comments at 7:24pm.

Mr. Simmons closed the public meeting at 7:24pm without public comment.

Mr. Dupuis moved and Mr. Turchan seconded the motion that the five elements of the findings of fact were met. The vote was unanimous in favor of the motion (5-0).

Mr. Dupuis moved and Mr. Turchan seconded the motion to grant the variances from Section 406 and Section 409.9.B.1 for case #2007:11.

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

Mr. Simmons recessed the meeting at 7:30pm.

Mr. Simmons reconvened the meeting at 7:35pm.

2. 2007:12 – Craig Salomon, 100 Woodland Road, North Hampton. The applicant requests a variance from Article IV, Section 406 to allow a subdivision of a parcel with 3.881 acres where a minimum of 4 acres is required. Property location: 100 Woodland Road, North Hampton, zoning district R-2, M/L 006-099.

In attendance for this application:

Craig Salomon, Applicant/Owner

Attorney Peter Loughlin

Attorney Loughlin explained to the Board that the Applicant proposes to subdivide his existing 3.881 acre lot into two lots making one lot conforming in every way and making the lot where the existing house sits less conforming by reducing the acreage by 5,178 square feet. He further added that the lot where the existing house sits has 462-feet of frontage and the new proposed lot would have 220-feet of frontage.

Mr. Simmons stated that he would be recusing himself from Mr. Salomon's case #2007:12 and stated for the record that his reason for recusing is not because there is a conflict but rather that as a practicing Attorney in the community it has been his policy to recuse himself from cases where an attorney who is a land owner has business before this Board he would recuse from the case.

Mr. Simmons recused himself from cases 2007:12 and 2007:13.

Mr. Turchan assumed the Chair for cases 2007:12 and 2007:13.

The applicant was informed that the case would be heard by a four-member Board rather than a full five-member Board and was given the option to continue the case to a meeting where a five-member Board would be in attendance. After a brief discussion with his client Craig Salomon, Attorney Loughlin opted to proceed with case 2007:12.

Attorney Loughlin presented two exhibits, (1) a copy of the tax map of Mr. Salomon's property and surrounding lots of his property showing 41 lots and stated that 21 of those lots are smaller than 1.8 acre lots and (2) a letter from Appraiser Ken Sakurai of Appraisal Connection opining that there is no measurable negative impact on the surrounding neighborhood property values. Attorney Loughlin mentioned that the letter from Ken Sakurai was not signed but intends to submit a signed copy at a later time.

Attorney Loughlin referred to the Supreme Court case *Mulcahey vs. Town of Chichester* and quoted the court decision, *to be contrary to the public interest the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinances basic zoning objective*. Attorney Loughlin opined that the way the land lays out and the amount of space between the buildings there would be no problem with public interest or spirit and intent of the Ordinance.

Mr. Turchan opened the meeting for public comment for those opposed to the variance request.

Attorney Scott Hogan, representing Bruce & Rita Dow of 104 Woodland Road, spoke on behalf of his clients. Attorney Hogan opined that the creation of Mr. Salomon's proposed house lot with the building envelope immediately adjacent to the Dow's home, would result in the immediate loss of the Dow's privacy, rural character, daily use and enjoyment and value of their property. Attorney Hogan presented photos showing the distance from the Dow's property to the Salomon's proposed new house lot. Attorney Hogan also submitted into evidence an opinion letter from Edward H. Tate II, stating that in his professional opinion "that there would be a diminution in value to the Dow property (Map 6 lot 98) directly abutting the proposed subdivision on its northerly bound".

Shane Smith of 103 Woodland also spoke in opposition to the variance request. Mr. Smith identified himself as a professional real estate investor. Mr. Smith submitted 22 evidentiary documents into evidence. Mr. Turchan stated for the record regarding the opinion letter from Barbara Dunkle, submitted by Mr. Smith, that she is not a licensed New Hampshire Appraiser but rather a real estate agent. Mr. Smith confirmed that statement.

Mr. Smith opined that the proposal fails to meet any of the five criteria. He further opined that if the variance were to be granted that future sales of the Woodland Road properties would suffer a devaluation effect primarily resulting from an irreversible change in the abutters' levels of personal privacy, open space views, noise pollution, light pollution, deforestation impact and levels of vehicular traffic.

Cary Schmidt of 101 Woodland Road spoke in opposition of the variance request. Ms. Schmidt opined that granting the variance would create a "windfall" effect and would set a precedent that would allow any resident to subdivide their land with less than the require 2-acre requirement. Ms. Schmidt opined to the Board that it should be up to the applicant to prove that there would be no diminution of property values to the surrounding properties.

Lisa Wilson of 9 Runneymede Drive opined that the residents of North Hampton expect the 2-acre zoning requirement in the residential districts to be upheld. Ms. Wilson referred to the community survey which resulted in 90% of the residents were in favor of maintaining the rural characteristics and opined that the 2-acre zoning helps do just that. Ms. Wilson asked that the Zoning Board uphold the current zoning ordinance for the residents and the abutters.

Mr. Turchan commented that he has been a member of both the Planning Board and Zoning Board for a long time and worked very hard in implementing the 2-acre zoning requirement.

Dr. Arnea stated that he is a member of the Planning Board but was not speaking as a representative to the Planning Board but rather as a resident of North Hampton. Dr. Arena made comments about the applicant rather than the application. Mr. Turchan advised him to direct his comments to the case and not make personal comments about the applicant. Ms. Smith also advised Dr. Arena to address his comments to the Board based on the case.

Mr. Dupuis moved and Ms. Smith seconded the motion to continue case #2007:12 to the June 26, 2007 meeting. The vote was unanimous in favor of the motion (5-0).

3. 2007:13 – Jarrod Patten, 1 Fern Road, North Hampton. The applicant requests a variance from Article IV, Section 409.9.B.1 to construct an in-ground pool and deck within the wetland setback. Property location: 1 Fern Road, zoning district R-1, M/L 008-023.

In attendance for this application:

Jarrod Patten, Applicant/Owner

Mr. Patten explained that his property lies within an isolated non-bordering wetlands. He further explained that there is seasonal standing water on the property.

Mr. Sanderson is an abutter to the subject property and explained that unknowingly his gravel piles along the property line between his property and Mr. Patten's prevented proper drainage of water flow off of Mr. Patten's property. The wetlands were man-made.

Mr. Mabey read the definition of isolated non-bordering wetlands. *Those areas of 3,000 sf or less which satisfy the definition of "wetlands" but which are not within 100-feet of any other wetlands and do not abut a marsh pond, bog, lake, river, natural, intermittent or perennial stream.*

Mr. Turchan opened the meeting to public comment at 9:45pm.

Mr. Turchan closed the public meeting at 9:45pm without public comment.

Ms. Smith moved and Mr. Dupuis seconded motion that it was determined by the Board that the five elements of the findings of fact were met.

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

Ms. Smith moved and Mr. Batchelder seconded the motion to grant the variance to Section 409.9.B. for case #2007:13.

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

Mr. Batchelder requested that it be stated for the record that Dr. Arena acted in an unprofessional manner regarding the comments that he made directed toward Mr. Salomon and a member of the Board during the deliberation of case #2007:12.

VI. Other Business

A motion was made and seconded to adjourn at 10:00pm and all were in favor (4-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary