



REGULAR MEETING MINUTES

TOWN OF NORTH HAMPTON ZONING BOARD OF ADJUSTMENT Tuesday, June 26, 2007 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: Susan Smith, Jennifer Lerner and Richard Batchelder

Alternates present: Ron Dupuis, Paul Marston and Marc Lariviere

Members Absent: John Anthony Simmons and Ted Turchan

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

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

Ms. Smith called the meeting to order at 6:06pm.

Ms. Smith explained that she would be Acting Chair in Mr. Simmons' and Mr. Turchan's absence.

Ms. Smith seated Mr. Dupuis for Mr. Simmons and seated Mr. Marston for Mr. Turchan.

Ms. Chase stated that the agenda was properly posted in the June 8, 2007 Hampton Union edition as well as the Library, Town Clerk's Office and Town Office.

Ms. Smith swore in Witnesses.

The minutes of May 22, 2007 were reviewed. Three of the five members present were in attendance at the May 22, 2007 meeting.

Mr. Batchelder moved and Ms. Smith seconded the motion to approve the May 22, 2007 minutes.

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

Ms. Smith moved and Mr. Batchelder seconded the motion to go into non-public session to review material the Board had just received.

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

Attorney Field from the audience cautioned the Board about the legalities of going into non-public session and referred to RSA 91-A:3 and opined that the reason given to go into non-public may not comply with the law.

Page 1 of 10

Ms. Smith thanked him for his opinion and the Board went into non-public session at 6:08pm. The Board came out of non-public session at 6:15pm.

Ms. Smith stated for the record that in a recent telephone interview with a reporter from the Seacoast Media Group comments that she made were taken out of context and she wanted the opportunity to explain. Ms. Smith emphasized that comments she made in the interview were referring to general duties of the ZBA and not in regards to any case pending before the Board. Ms. Smith opined that the ZBA members represent a fair cross section of the landowners in the Town of North Hampton and they volunteer their time and they view their responsibility to the Town most seriously and that the decisions are made only after all matters put before them by the applicant and by the opposing abutters during the variance hearing.

Ms. Smith stated that the Zoning Board members received a letter from the Conservation Commission and explained that some of the members received it electronically, some received it in their mailbox and some did not receive it at all. Ms. Smith referred to the Rules of Procedure that states that all correspondence to the Board must be addressed to the Chair and received by the Chair at least five business days prior to the meeting in which it is to be discussed. She further stated that in a unanimous decision the Board decided to table the discussion of the letter from the Conservation Commission to the July 24, 2007 meeting.

Old 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. Luck withdrew his application case #2006:16 on June 14, 2007.

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. This case is continued from the May 22, 2007 meeting.

In attendance for this application:

Craig Salomon, Owner/Applicant
Attorney Peter Loughlin

Mr. Marston stated that he was not present at the last month's meeting when Mr. Salomon's case deliberations began and wanted to make sure the applicant was made aware that he had no knowledge of last month's proceedings. Ms. Smith asked the applicant if he were willing to have his case heard before a four-member Board. Attorney Loughlin and Mr. Salomon left the meeting for a moment to discuss the offer and came back and agreed to a four-member Board. Mr. Marston was not seated as an alternate for the Salomon case.

Ms. Smith started where the Board left off at last month's meeting and asked if there was anyone in the audience opposed to the application.

Janet Carroll, 86 Woodland Road spoke against the application and opined that Mr. Salomon must have known of the two-acre requirement before he purchased the property therefore there is no hardship for Mr. Salomon.

Phil Wilson, 9 Runneymede Road spoke in opposition to the application and submitted into the record, evidence, marked as exhibit D, supporting his opinion. Mr. Wilson's summary conclusion in exhibit D is as follows:

Subdividing this or any of the less-than-four-acres parcels in Town is not in the public interest and is contrary to the spirit of the Zoning Ordinance because it results in more highly fragmented habitat, reduced wetlands and riparian buffers, reduced aquifer recharge areas for private and public wells, and diminished aesthetic values for all residents.

The public relies on the Zoning Ordinance, as adopted by the Legislative Body, to ensure that development is controlled in a manner that is consistent with the objectives expressed in the Zoning Ordinance and the Master Plan, and these objectives, as listed above, run counter to granting a variance to subdivide any parcel of less than four acres, the minimum size required for subdivision.

Gail Keach, 227 Post Road spoke in opposition and voiced concerns that more people with a little less than four acres will want to subdivide. She opined that the two-acre lot requirement should be respected and abided by, by everyone in North Hampton.

Diane Kensler, 130 Woodland Road spoke against the application.

Stanley Knowles stated that he is a member of the Conservation Commission but was not speaking on their behalf. He further stated that he was a party to developing the letter from the Conservation Commission to the Zoning Board and respectfully requested to have the letter read for the record and for the public.

Ms. Smith said that the Board had less than 24 hours to review the letter and one member did not see it at all and opined that it is not fair to the community to add it into the record until the members can discuss it as a Board and read into the minutes.

Robert Field questioned whether or not there was an administrative error in not notifying the Conservation Commission of the Salomon application. Attorney Loughlin presented a copy of the certified receipt addressed to the Conservation Commission proving notification was mailed to them in a timely fashion.

Attorney Loughlin informed the Board that his client would not object to the Board reading the submitted Conservation Commission letter into the record. Ms. Smith said that the Board collectively decided to table the discussion of the Conservation Commission letter until next month's meeting.

Richard Bettcher, 95 Lovering Road explained that he initially owned 3+ acres in Town and purchased land increasing his acreage to 4 acres and stated that he felt Mr. Salomon should try and do the same and uphold the 2-acre requirement.

Attorney Loughlin submitted the following material to the Board:

- Survey plan of the Dow property M/L 006-98 done by Beals Associates and marked as exhibit E
- Letter from Certified Wetland Scientist James H. Long stating that Mr. Salomon's proposed lots contain at least the requisite one-acre of contiguous uplands based on his delineation. (Marked as exhibit F)
- Letter from NH Certified General Appraiser Ken Sakurai stating that it was in his opinion that based on the information and data collected for the Salomon appraisal there is no measurable negative impact on the surrounding neighborhood values and listed his reasons. The document was marked as exhibit G.
- Portion of a USGS map showing that the Salomon home is in the woods and there is acres of wetlands in the back. (Marked as exhibit H)
- Pictures of Woodland Road showing the Salomon driveways and pictures of the abutting property's garage marked as exhibits I and J.

Attorney Laughlin opined that there were four special conditions to take into consideration (1) this lot by nature has been subdivided into two buildable areas (2) there is 775-feet of frontage on the lot (3) the lot is triangular shaped (4) the wetlands in the rear prevents the land from being developed resulting in a total of only two units.

Attorney Laughlin stated for the record that in his opinion adding a single-family home on Woodland Road would not diminish the value of abutting properties and opined that the five conditions of the variance were satisfied.

Mr. Salomon explained that (1) he hired Attorney Laughlin to handle the legal aspects of his variance application, (2) Beals Association did the survey of the property depicting the setbacks from the wetlands and septic setback and shows the building envelope, (3) NH Soils flagged wetlands on the property and (4) the opinion of Appraiser, Ken Sakurai stating that the subdivision would not diminish the value of surroundings properties. Mr. Salomon stated that the first thing he did before applying for the variance was to determine where the wetlands were on the property.

Mr. Salomon said that when he ran for Selectman he did not give up his rights to be allowed to go before the ZBA to seek relief from a particular zoning ordinance. Mr. Salomon added that it is the Zoning Board members who determine whether or not an applicant meets the five criteria but every citizen has the right to apply for relief to the Zoning Board.

Attorney Hogan, representing the Dows who abut Mr. Salomon, requested the opportunity to review all new evidence presented at this meeting and to be able to make comments to the Board on the new evidence before they make their final decision. He referred to the Conservation Commission letter that was received and the Board tabled to next month because they did not have time to digest it and also referred to the ZBA's Rules of Procedure where it states that the Board must receive correspondence at least five days prior to the meeting.

Ms. Smith explained that the case was a continued case and the evidence received this evening by the Applicant is pertinent to the case and that there were issues raised at last month's meeting and the documentation submitted by the Applicant were answers to those issues.

Attorney Hogan asked if he would be given the opportunity to review all of the new information submitted this evening and give his comments regarding that new information to the Board prior to the July meeting?

Ms. Smith said, "no". Ms. Smith explained that the new information submitted was available to review and the opportunity to read over the new information is available to anyone wishing to review and comment on.

Cary Schmitz, 101 Woodland Road spoke in opposition to the application and suggested that Mr. Salomon make an attempt to purchase additional land from an abutter to increase his acreage to four acres.

Shane Smith, 103 Woodland Road was sworn in by Ms. Smith. Mr. Smith submitted new evidence different from what he submitted to the Board at the May 22, 2007 meeting. The new evidence was marked as exhibit L. The exhibit included attachments of MLS residential home listings on Woodland Road and each one advertises home setting, privacy and views and Mr. Smith states that removing any of the elements from a home's marketability will cause a noticeable decrease in value.

Mr. Smith stated that he had a conversation with Ken Sakurai and Ms. Smith asked if he had a written statement from Mr. Sakurai. Mr. Smith did not have a written statement so Ms. Smith would not allow his comments regarding Mr. Sakurai's conversation with him into the record. Mr. Smith opined that if the Board grants Mr. Salomon's variance request then the Board would be setting a dangerous precedent.

Ms. Smith recessed the meeting at 8:10pm.

Ms. Smith reconvened the meeting at 8:23pm.

Ms. Smith announced that Mr. Peter Horne, case # 2007:16 requested a continuance to the July 24, 2007 Zoning Board meeting due to the late hour.

Dr. Arena said that as public officials everyone took an oath to abide by laws including the ordinances of this town, the State of NH and the Federal laws. He opined that Mr. Salomon should not be seeking relief from the two-acre zoning requirement.

Attorney Loughlin commented on the letter submitted by the Conservation Commission and asked that it be clarified that the letter had nothing to do with the Salomon case and said that his client Mr. Salomon had no problem with the Board addressing the letter.

Ms. Smith confirmed that the letter had no bearing on the Salomon case but the members unanimously decided to table addressing the letter from the Conservation Commission to the July 24, 2007 meeting. She also confirmed that no application was discussed when the Board adjourned into non-public session.

Mr. Wilson went over a map prepared by NH Estuaries project depicting the impervious surface in the region and pointed out that there is extreme concern about the growth in impervious surface in the coastal zone. Mr. Wilson pointed out the alarming rate that impervious surface

has increased in North Hampton, from 647 acres in 1990 to 958 acres in 2000 to 1,100 acres in 2005 and they say that North Hampton's Town goal should be less than 886 acres. He said that if these types of variances are granted it would result in more impervious surface.

Mr. Wilson respectfully requested to be able to read RSA 91A:3 into the record regarding non-public meetings.

Ms. Smith stated for the record everything that was discussed in non-public session earlier in the meeting. She asked each of the members, "Did you receive a letter or an email from the Conservation Commission?" Mr. Batchelder answered, "e-mail, last night", Ms. Smith answered, email, last night and at 6:00pm when I checked my mailbox today." Ms. Lerner answered "email last night and a copy in my mailbox yesterday at 4:00pm", Mr. Marston answered, "nothing", Mr. Dupuis answered, "email and out of my mailbox."

Jon Rineman spoke in opposition to the application and opined that Mr. Salomon knew the two-acre requirement prior to purchasing the property therefore there is no hardship.

Ms. Smith closed public discussion at 8:40pm to go into Board deliberation.

Mr. Dupuis stated for the record that he felt that most of the people that testified this evening and at last month's meeting did so out of concern for the impact the variance would have on the area and some testified because of who Craig Salomon is and said that that was not fair. He further stated that impact on the area would be too great and that he would be voting in the negative.

Ms. Smith stated for the record that she lives on Woodland Road and has for many years and knows the area very well. She said that she is torn just like everyone and that it is a very difficult decision to make. "If you don't meet the *letter of the law* as far as what we can do in this town we stamp a lot of people out." She further stated that the Board votes on cases individually so the vote tonight is not setting a precedent one way or the other.

Ms. Smith read a section from NH Planning and Land Use regulations stating, "The Board of Adjustment does not have to accept the conclusions of experts but rather could properly rely on its own knowledge of the area in which the variance was sought".

Case 2007:12 – Craig Salomon, 100 Woodland Road, North Hampton.

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

Ms. Smith moved and Ms. Lermer seconded the motion to grant the variance from Article IV, Section 406 for case 2007:12 to allow a subdivision of a parcel with 3.881 acres where a minimum of 4 acres is required on property located at 100 Woodland Road North Hampton M/L 006-099.

The vote passed (3 in favor 1 opposed and 0 abstentions). Mr. Dupuis voted against.

Ms. Smith reminded everyone of the thirty-day appeal period.

New Business

2007:14 – Jarrod Patten, 1 Fern Road, North Hampton. The applicant requests a variance from Article IV, Section 409.9.B.1 to construct a garage within 50’ of the wetlands setback. Property location: 1 Fern Road, North Hampton, zoning district R-1, M/L 008-023.

Mr. Patten waived his position on the agenda to let Mr. Simmons’ case be heard before his own case.

2007:15 – Simmons Trust, 54 Walnut Ave., North Hampton. The Applicant requests a variance to Article IV, Section 409.8.A, relief from the 75’ setback from septic to wetlands. Property Owner: Simmons Trust. Property location: 68 Lovering Road, North Hampton, zoning district R-3, M/L 019-042.

In attendance for this application:

Mr. Peter Simmons, Applicant

Mr. Jim Gove, Soil Scientist

Ms. Smith seated Ms. Lerner as Chair.

Ms. Smith recused herself.

Mr. Lariviere was seated for Ms. Smith.

Mr. Batchelder recused himself.

Mr. Marston was seated for Mr. Batchelder.

Ms. Lerner swore in witnesses.

Mr. Simmons explained that he was before the Zoning Board back in 2004 and was granted a variance to install a septic system 30-feet from the wetlands at 68 Lovering Road. Mr. Simmons went to the State with a plan to install a septic 30-feet from the wetlands and the State did not like the plan and suggested that the septic be moved further away from the Winnicut River, which would result in the proposed septic system to be installed 10-feet from the wetlands rather than 30-feet and 75-feet away from the Winnicut River.

Mr. Gove explained that there are two types of wetlands (1) poorly drained soils where the land is wet in the spring and dry in the summer and (2) very poorly drained soils where the land is wet year round. He further explained that the State views poorly drained soils as less sensitive and the State is more apt to grant relief from poorly drained soils rather than very poorly drained soils resulting in the suggestion to move the proposed septic further away from the Winnicut River which would be a better environmental alternative to where it was originally placed.

Ms. Lerner asked if there was anyone in the audience in favor of or opposed to the application.

Mr. Jarrod Patten said that he is in favor of the application stating that if the State approves the new location of the leach field he can't see any argument the Town could make to vote against it.

Roger LeBrecht, 70 Lovering Road spoke in opposition to the application. Mr. LeBrecht submitted pictures of the property when flooded with water. The pictures were entered into the record. Ms. Lerner reminded Mr. LeBrecht that he could only speak on the case that was before the Board this evening.

Tim Harned, 66 Lovering Road spoke in opposition to the application. Mr. Harned submitted pictures of 68 Lovering Road when flooded with water. Mr. Harned asked whether or not the Conservation Commission was asked to review and comment on Mr. Simmons' application. Ms. Lerner stated that the Conservation Commission was notified and had the opportunity like everyone else to review the record prior to the meeting but was not asked to give the ZBA an opinion. Mr. Harned asked whether or not the North Hampton Water Commission was contacted and asked for their opinion to this application. Ms. Lerner said they were not notified but reminded Mr. Harned that the meeting was publicly noticed in the newspaper and two public places. Mr. Harned asked if the water utility itself was solicited for an opinion on this case. Ms. Lerner said that they were not and again stated that the meeting was publicly noticed.

Mr. Harned presented pictures of delineated wetlands prepared by West Environmental of property described as tax map and lot 22-24. Ms. Lerner asked Mr. Harned to speak only on the property at 68 Lovering Road. Mr. Harned went through evidence he submitted to the Board and explained that he was trying to ascertain what information that is collected in terms of rendering a decision in the best interest of the Town. Mr. Harned showed pictures taken over the past couple of years of the subject property when under water. Ms. Lerner said that the pictures are irrelevant because there are not dates on the pictures and the pictures could have been taken years ago. Mr. Harned said that the area where the proposed leach field will be installed is routinely flooded.

Mr. Simmons stated that 99% of the water buildup shown in the pictures presented is due to beavers damming up the culvert on Mr. Harned's property. Mr. Simmons submitted pictures of a culvert on Mr. LeBreck's property stating that the water from Mr. LeBreck's property is being drained onto his property at 68 Lovering Road.

Craig Salomon, 100 Woodland Road spoke in favor of the application and stated that the ZBA is to hear the evidence presented to them and that the burden of proof lies on the applicant.

Richard Bettcher, Lovering Road said that as a Water Commission he has great concerns about the wells located down river of Mr. Simmons' property. He said that Mr. Simmons' lot was flooded over the past two springs. The Commissioners are very concerned with the quality of the water.

Mr. Simmons agreed with everyone on their concerns with the quality of water and that is why it is better to be 75' away from the River to better protect the water.

Dr. Arena said that water is a very important commodity. He suggested that the Board pay attention to input from the Conservation Commission and Aquarion Water Company.

Dick Wollmar submitted a copy of RSA 483-B – Comprehensive Shoreland Protection Act into the record. He suggested to the Board that they take into consideration the laws of the State of NH.

Mr. Gove explained that the first person on the site at 68 Lovering Road to flag the wetlands was Mark West of West Environmental, secondly Tim Florida went out and verified the wetland flags and prepared a High Intensity Soils (HIS) map, Mr. Florida is also a wetland scientist and certified soil scientist, and lastly Mr. Gove went out to inspect the wetland flags and agreed with the wetlands flagging that was done. Mr. Gove said he did modify the HIS map slightly. He further explained that the test pits were reviewed by Rockingham County Conservation District, Richard Bond, who is also a certified soil scientist stating that the proposed location was a good location to put the leach field. Mr. Gove said that the leach system would be installed outside of the flood zone. The system to be installed is the most advanced system allowed by the State and the failure rate is virtually zero.

Mr. Lariviere questioned if the bottom of the proposed leach bed was going to be higher than the highest water shown in the submitted pictures. Mr. Gove answered, "yes."

Mr. Simmons went over the five criteria of the variance standard.

Regarding the first criteria, Granting the variance will not be contrary to the public interest, Mr. Simmons added for the record that the public interest will be served by staying as far away as possible from the Winnicut River.

2007:15 Simmons Trust, re: 68 Lovering Road

Findings of Facts		Not Contrary to Public Interest		Unnecessary Hardship Exists		Consistent w/Spirit of Ordinance		Substantial Justice Will be Done		Will It Diminish Surrounding Properties as asked by Jennifer Lerner, Acting Chair	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
	Simmons										
	Turchan										
	Lerner	x		x		x		x			x
	Smith										
	Batchelder										
Alternate	Marston	x		x		x		x			x
Alternate	Lariviere	x		x		x		x			x
Alternate	Dupuis	x		x		x		x			x

Ms. Lerner made a motion on case 2007:15 – The Simmons trust to grant the variance to Article IV, Section 409.8.A for relief from the 75-foot setback from the septic to the wetlands, Property Owner, Simmons Trust, property location, 68 Lovering Road North Hampton zoning district R-3, M/L 019-042 and to allow the septic to be located 10-feet from the wetlands. The motion was not seconded but the members proceeded to vote unanimously in favor of the motion made by Jennifer Lerner (4-0).

Ms. Lerner reminded everyone of the thirty-day appeal period.

Mr. Wilson requested that the video recording be added to the record in perpetuity.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Page 10 of 10