



**REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday August 21, 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: John Anthony Simmons, Chairman; Ted Turchan, Vice Chairman; Susan Smith, Jennifer Lerner and Richard Batchelder.

Alternates present: Ron Dupuis and Marc Lariviere

Members Absent: None

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 6:02pm.

Mr. Simmons referred to the July 25, 2007 letter he wrote to the Selectmen on behalf of the Zoning Board requesting that the Board of Selectmen set a fee for recording Zoning Board decision letters at the Registry and asked whether or not that fee had been set. Ms. Chase informed the Board that the Board of Selectmen would be discussing all fee amounts at their next meeting. Mr. Simmons asked Ms. Chase to keep the Board informed of the Selectmen's progress.

Mr. Simmons requested Mr. Mabey make copies of the past two Conservation Commission meetings and made copies of a group of emails from Selectperson Emily Creighton suggesting a joint meeting between the Conservation Commission, Zoning Board and the Board of Selectmen. A motion was made and seconded with all in favor to table the discussion until the end of the meeting.

Mr. Simmons explained that a copy of the Rules of Procedure were available for anyone in the audience to review.

Mr. Simmons swore in witnesses.

Ms. Chase reported that the agenda was properly and legally posted in the August 9, 2007 edition of the Hampton Union and at the Library, Town Clerk's office and Town office.

Minutes

Mr. Simmons and Mr. Turchan stepped down. Ms. Smith assumed the Chair. Mr. Lariviere was seated for Mr. Simmons and Mr. Dupuis was seated for Mr. Turchan.

Mr. Dupuis moved and Ms. Lermer seconded the motion to approve the June 26, 2007 minutes. The vote was unanimous in favor of the motion (5-0).

Mr. Simmons resumed the Chair. Mr. Lariviere stepped down.

Mr. Simmons moved and Mr. Batchelder seconded the motion to accept the July 24, 2007 minutes as amended. The vote was unanimous in favor of the motion (5-0).

Mr. Simmons directed Ms. Chase to forward copies both electronically and in hard copy with the red-line changes of his suggested amendments to minutes to each of the Board members for their review.

A discussion ensued regarding last month's vote to amend III.F. of the Rules of Procedure. The Board agreed that the amendment was not necessary.

Mr. Simmons moved and Ms. Smith seconded the motion to leave III.F. of the Rules of Procedure as originally stated. The vote was unanimous in favor of the motion (5-0).

2007:17 – Sean Loeffler, 49 Walnut Ave., North Hampton. The applicant requests a special exception for a home occupation (construction business) under Article V, Section 507. Property Owners: Marie and Sean Loeffler, Property location: 49 Walnut Ave., North Hampton, zoning district R-3, M/L 018-056.

In attendance for this application:
Sean Loeffler, Owner/Applicant

Mr. Simmons recused himself from case #2007:17. Mr. Turchan assumed the Chair. Mr. Dupuis was seated for Mr. Simmons.

Ms. Smith stated that she had walked the property and asked Mr. Loeffler if the heavy equipment she saw was a part of the proposed home business. Mr. Loeffler answered, "yes".

Mr. Loeffler explained that his current business is renovation of old homes from top to bottom. He would like to build a structure on his property to house his equipment where he can maintain it.

Mr. Turchan asked the Board to refer to the requirements of Section 507 – Home Occupation.

Ms. Smith voiced concerns with the proposed home occupation and referred to Section 507.4, which states *objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall not be produced.*

Mr. Turchan mentioned that there are no neighbors at that end of the lot where Mr. Loeffler intends to erect his building where there are existing power lines. He also reminded the Board that they could add conditions to special exceptions.

7:00pm meeting broke to replace videotape.

7:10pm meeting reconvened.

It was noted that there was no correspondence from abutters pertaining to this case either for or against.

Mr. Loeffler explained that the equipment is not visible on Walnut Ave.

Mr. Turchan opened the meeting to public comment to those in favor of the application. There was no public comment.

Mr. Turchan requested public comment to those opposed to the application. Mr. Peter Simmons spoke in opposition of the application. Mr. Simmons commented that the proposed site is in the R-3 zone where a construction business would be prohibited. He further commented that the existing garages on Walnut Ave. were established prior to zoning entitling them to be “grandfathered” businesses. He further opined that the business district is Route 1, not Walnut Avenue.

Mr. Loeffler said that he wished to keep his business small and has no interest in relocating to Route 1.

Mr. Dupuis made a motion seconded by Ms. Lermer to table case #2007:17 to the September 25, 2007 meeting pending further information such as number of pieces of equipment, definition of equipment, visual impact and hours of operation. The vote was unanimous in favor of the motion (5-0).

Mr. Turchan directed Mr. Loeffler to meet with Mr. Mabey and work together on gathering the requested information and present it at the September 25, 2007 meeting.

Attorney Pelech made an announcement that he had to leave the meeting and would not be present to present case 2007:19 for his client Mr. Milliken and that Mr. Coldwell would take over when the case was ready to be taken up.

Request for rehearing case #2007:12 – Craig Salomon, submitted by Attorney Scott Hogan on behalf of Bruce & Rita Dow, Shane Smith & Allison Reedy and Kari & Jeff Schmitz.

Mr. Turchan stepped down and Ms. Smith assumed the Chair for the request for rehearing on case #2007:12 – Craig Salomon.

Ms. Smith stated for the record that she objected to statements made in Attorney Hogan’s motion for rehearing where he made innuendos to her impartiality regarding her vote on the Salomon case. Ms. Smith opined that she made an impartial decision on the Salomon case and stands by her original vote.

Ms. Smith responded to a particular section of the motion for rehearing which states *the Board allowed the Applicant to submit a variety of new information at the June 26th hearing itself, and*
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then specifically denied abutters, and counsel, the opportunity to review and comment upon this information. This was after declining the Conservation Commission's request to review and comment. Ms. Smith said that the information produced at the June 26th meeting was available for review and the Building Inspector was available to make copies for anyone wishing to receive copies. Ms. Smith further opined that the above statement from Attorney Hogan was misleading and at no point in time was any of the information made unavailable to be read, discussed and/or refuted.

Mr. Batchelder stated that he did not see any new evidence brought forth and stands by his original vote.

Ms. Lerner stated that no new evidence was presented therefore she stands by her original vote.

Mr. Dupuis moved and Mr. Batchelder seconded the motion that the original vote of June 26, 2007 on case #2007:12 – Craig Salomon, stands. The vote was unanimous in favor of the motion (4-0).

Mr. Simmons assumed the Chair. Mr. Turchan was reseated. Mr. Dupuis stepped down.

2007:18 – Stephen and Patricia Gianotti, 34 Woodland Road, North Hampton. The Applicants request a variance from Article IV, Section 409.9.B. to allow a 10-foot addition to the current structure within the wetlands setback. Property location: 34 Woodland Road, North Hampton, zoning district R-2, M/L 002-047.

In attendance for this application:

Stephen & Patricia Gianotti/Owners Applicants

Mr. Simmons swore in Mr. and Mrs. Gianotti.

The Board received a letter from the Conservation Commission requesting that the applicants provide further details on the wetlands boundaries on the proposed parcel. Mr. and Mrs. Gianotti provided a new plan delineating the wetlands; the plan was marked as exhibit "B".

Mr. Gianotti explained that the new proposed addition would be a new kitchen. Mr. Simmons explained that it was up to the applicants to prove that all other options have been exhausted as to where the new kitchen could be located without needing a variance.

Mrs. Gianotti explained that the applicants wished to attach the house to the existing garage and architecturally it was the only option to put the kitchen in the proposed location. The option to move the garage closer to the house is not feasible because the cost would exceed the cost of the proposed addition and the garage is not sturdy enough to move.

Ms. Smith stated that she walked the property and did not come upon any wetlands.

Mrs. Gianotti submitted photos of the property and they were marked as exhibit "A".

Mr. Simmons opened the meeting to the public for those in favor of the application.

Mr. Denis Kokernack, 10 Ship Rock Road spoke in favor of the application. Mr. Simmons swore him in as a witness. Mr. Kokernack explained that his property directly abuts the area in which the 52-foot is the issue. Mr. Kokernack expressed his confidence in the proposed design and agrees with and supports the proposed addition.

Mr. Simmons requested comments for those opposed to the application. There was no public comment in opposition to the application. There was no other public comment.

Mr. Gianotti thanked those members who took the time to walk the property and stated that he appreciated their efforts.

Case #2007:18 – Stephen and Patricia Gianotti

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	x		x		x		x		x	
	Smith	x		x		x		x		x	
	Batchelder	x		x		x		x		x	
Alternate	Marston										
Alternate	Lariviere										
Alternate	Dupuis										

Ms. Smith moved and Ms. Lermer seconded the motion to grant the variance for case #2007:18, Stephen and Patricia Gianotti from Article IV, Section 406.9.B. to allow a 10-foot addition within the wetlands setback as shown in the plan marked exhibit “B”.

Mr. Simmons moved and Mr. Turchan seconded the motion to amend Ms. Smith’s motion to include that there would be no further relief to wetlands setbacks granted on the property, M/L 002-047.

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

Mr. Simmons explained the 30-day appeal period to the Applicants.

2007:19 – Robert and Laura Milliken, 39 Chapel Road, North Hampton. The Applicants request a variance from Article IV, Section 406.9 to allow a backlot subdivision. Property location: 9 Maple Road, North Hampton, zoning district R-2, Map 006, lots 128 & 129.

In attendance for this application:

Robert Milliken, Owner/Applicant
Corey Coldwell, AMES MSC

Mr. Dupuis was seated for Ms. Lerner as he sat on the first application involving the Millikens.

Mr. Coldwell was sworn in.

Mr. Coldwell explained the chain of events regarding the Milliken plan and application.

- The ZBA granted a variance to Article IV, Section 406.9 on April 17, 2007, which included the Dowd property, lot 130.
- The applicant went before the Planning Board for a lot line adjustment on June 5, 2007. The PB determined that it had no authority to change an existing non-conforming use without a variance regarding lot 130. The applicant agreed to change the plan and increase the acreage on lot 130 to two acres. The case was continued to July 3, 2007.
- The applicant came to the July 3rd PB meeting with a new plan that eliminated lot 130 altogether. The PB determined that the applicant would have to go back before the ZBA with the new plan and request a variance. The PB continued the case to the September 4, 2007 meeting.

Mr. Simmons opened the public hearing to those in favor of the application. There was no public comment.

Mr. Simmons requested comments from those in opposition of the application.

Sandra Woodworth, 19 Maple Road was sworn in and spoke in opposition of the application.

Ms. Woodworth stated that the backlot (lot 129) is not the original lot because a piece of it was taken from it when the Cotton Farm development was established.

Mr. Coldwell presented copies of deeds proving that the lots were originally created in 1949. The deeds were submitted and marked as exhibit "A".

Ms. Woodworth voiced concerns on cutting of trees. Mr. Milliken stated that as long as the trees are alive they would not be cut.

Case 2007:19 – Robert and Laura Milliken

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

Mr. Turchan moved and Mr. Dupuis seconded the motion to approve the variance from Article IV, Section 406.9 for the new plan for the Milliken case #2007:19.

Mr. Simmons made a friendly amendment to include that all living vegetation on the western property line within the 30-foot side setback shall remain. Mr. Turchan and Mr. Dupuis accepted the friendly amendment.

The vote passed in favor of the motion (3 in favor, 1 opposed and 1 abstention). Mr. Simmons abstained and Ms. Smith opposed.

Mr. Simmons explained the 30-day appeal period to Mr. Milliken.

Mr. Simmons brought up the previous issue concerning communication between the Zoning Board and the Conservation Commission.

Copies of emails between the Selectmen’s representative to the Conservation Commission the Selectmen and the Planning & Zoning Administrator were reviewed by the members.

Mr. Simmons stated for the record that the Zoning Board did not reject comments made by the Conservation Commission pertaining to cases involving wetlands variances because the comments were not produced on Conservation Commission letterhead and further stated that the Conservation Commission Chairman and any other Conservation Commission member has been invited to attend the Zoning Board meetings.

Mr. Wilson spoke from that audience and opined that the issue has been taken care of. The Zoning Board has requested that the Conservation Commission put their comments on Conservation Commission letterhead, signed by the Chair or designated representative, dated with an attached copy of the Conservation Commission minutes pertaining to that particular case, and that the Conservation Commission has agreed to oblige.

Lisa Wilson, a member of the Conservation Commission, was in the audience and Mr. Simmons invited her and/or any other member of the Conservation Commission to come to the Zoning Board meetings anytime and give input on any application.

A motion was made and seconded to adjourn the meeting at 10:50pm with all in favor. (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary