



**REGULAR MEETING MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
Tuesday, September 25, 2007 at 6:00pm  
North Hampton Elementary School Music Room**

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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; Susan Smith, Jennifer Lerner and Richard Batchelder

**Alternates present:** None

**Members Absent:** Ted Turchan

**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 6:09pm.

Mr. Simmons announced to the audience that there would be a four-member Board this evening and explained that each applicant had the right to be heard by a five-member Board and had the option to either request a continuance or proceed.

Mr. Simmons distributed copies of an article from the Town and City magazine titled The Riggins Rules to each of the members and directed Ms. Chase to distribute copies to the members and alternates not present and to add it to the packet of information for future new members. The article addresses suggested “do’s and don’ts” for the conduct of Public Hearings and the Department of Chairmen and Members of Boards, Commissions and Other Bodies.

Mr. Simmons read a letter from Planning Board Chairman Phil Wilson. The letter requested that the Zoning Board, Conservation Commission and Planning Board hold a joint meeting to discuss Article IV, Section 409.9 “Buffer Zone Restrictions” of the Zoning Ordinance. He further stated in his letter that the purpose of the requested joint meeting would be for the Planning Board to gather data about whether Section 409.9, as currently written, is effectively serving the public interest and that input from the Zoning Board and Conservation Commission would be helpful.

Mr. Simmons asked for each of the member’s opinion on the Planning Board’s request.

Mr. Batchelder said that he didn’t think it would be a good idea for the Zoning Board to go forward on meeting with the Planning Board and Conservation Commission to discuss changes to a zoning

ordinance. He said that the Zoning Board should remain neutral and impartial and it would be difficult to do so if the Zoning Board were involved in the process of amending a zoning ordinance.

Mr. Simmons agreed with Mr. Batchelder and added the question “how is it possible to write the ordinance and then apply it objectively?”

Ms. Smith opined that the ZBA could not remain impartial if the Board is part of the process of possibly rewriting a zoning ordinance.

Mr. Simmons addressed the fact that the ZBA has met with the Planning Board in a joint meeting in the past but the scope of such meetings were interpretation issues and the that zoning ordinance the Planning Board wished to discuss in their letter, Section 406.9, is a clearly written ordinance.

Laurel Pohl spoke as a member of the Planning Board and asked if the decision letters to the applicants contained how the applicant met each of the five criteria. Mr. Simmons explained that the minutes would reflect how the Board determined whether or not the five criteria were met. The decision letter includes the disposition of the case and any conditions the Board may have come up with.

Mr. Simmons offered to meet with the Planning Board and Conservation Commission as a messenger of the Zoning Board to help explain what the law is and what the Zoning Board faces with each application if it were not case specific.

Ms. Pohl said that there were enough new members to the Planning Board that it would be beneficial for them to get a better understanding of what the Zoning Board goes through.

Mr. Simmons said that he would be happy to meet with the Planning Board to discuss the Zoning Board’s process in dealing with variance requests. The Zoning Board members agreed that it would be a good idea.

Ms. Pohl said that she could not speak for the Planning Board but would relay the information to the Chair and Vice Chair.

**Ms. Smith moved and Mr. Batchelder seconded the motion to authorize Chairman Simmons to meet with the Planning Board to help clarify the process and necessary steps that the Zoning Board must take to grant variances.**

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

**Mr. Simmons moved and Ms. Smith seconded the motion that the Zoning Board members authorize him to write a letter to the Planning Board in regards to the above motion.**

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

Mr. Simmons stated that a copy of the Rules of Procedure was available to the public.

Mr. Simmons swore in Witnesses.

Ms. Chase reported that the agenda was legally posted in the September 11, 2007 edition of the Hampton Union and at the Library, Town Clerk’s office and Town office.

The minutes of August 21, 2007 were reviewed and amended.

**Ms. Lerner moved and Ms. Smith seconded the motion to accept the minutes of August 21, 2007 as amended.**

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

## **Old Business**

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. This case is continued from the August 21, 2007 ZBA meeting.

In attendance for this application:

Mr. Simmons recused himself.

Ms. Smith assumed the Chair.

Ms. Smith noted for the record that the applicant was not present and suggested that the case be continued to next month's meeting, October 23, 2007.

**Ms. Lerner moved and Mr. Batchelder seconded the motion to continue Case # 2007:17 – Sean Loeffler to the October 23, 2007 meeting.**

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

Mr. Peter Simmons commented from the audience and requested to be notified if the applicant did show up this evening.

Ms. Smith explained that the case was voted on to continue to next month and would not be heard tonight.

Mr. Simmons resumed the Chair.

## **New Business**

**2007:20 – Joel and Wendy Clough, 36 Lovering Road, North Hampton. The applicants request a variance to Article IV, Section 409.9.B.2.d. to allow construction of a deck addition within the 50-foot wetlands setback requirement. Property location: 36 Lovering Road, North Hampton, zoning district R-3, M/L 018-066-000.**

In attendance for this application:

Joel Clough, Owner/Applicant

Mr. Simmons stated for the record that he was Mr. Clough's son's little league coach in the past but did not feel it necessary to recuse himself from the case.

Mr. Clough explained that his existing patio is 27-feet from the wetlands buffer where 50-feet is required and would like to construct a deck off of the second story that would overhang on the patio but not go out any further into the wetland buffer than the existing pervious patio pavers.

Mr. Simmons asked that Mr. Clough sketch out on the proposed plan where he intended to put the stairwell. Mr. Simmons marked the sketch as Exhibit A.

Mr. Simmons explained to the applicant that the Board needed to determine if all other options to put the deck were exhausted and that there was a real hardship involved.

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

Mr. Simmons asked for public comment to those against the application. There was no public comment.

Mr. Simmons asked for public comment to those whom were neither for nor against the application but wanted to speak about the application. There was no public comment.

Mr. Simmons closed the public hearing.

**Board deliberation:**

Ms. Smith stated that she walked the property and Mr. Clough explained to her how he would like to construct the stairwell. She further commented that any water runoff would go through the slats of the deck floor and that there would be no further encroachment into the wetland buffer than what already exists.

Mr. Batchelder agreed with the runoff being able to go through the semi impervious surfaces of the existing pavers and proposed deck and an added egress would be safer.

Mr. Simmons noted for the record that the Conservation Commission did not make comments on this application. He also voiced concerns that the applicant did not provide a delineated wetlands plan done by a soil scientist. Mr. Simmons also walked the property.

Ms. Lerner stated that the applicant has made many improvements to the home since they first purchased it. She also agreed that the added egress would only make the home safer.

**Ms. Lerner moved and Ms. Smith seconded the motion that the applicant had met all five criteria.**

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

**Ms. Lerner moved and Ms. Smith seconded the motion to approve the variance request to Article IV, Section 409.9.B.2.d. contingent upon the applicant providing a copy of the plan depicting the wetlands.**

**Ms. Smith made a friendly amendment to add the condition that the deck is to be constructed to allow water to run through, never to have a roof and the stairwell exiting off of the deck shall run attached to and parallel with the back side of the house.**

**Mr. Batchelder made a friendly amendment to add the condition that the deck shall not be bigger than the existing pavers and doesn't encroach further into the wetland buffer.**

**Mr. Simmons made a friendly amendment to add the conditions that the deck not to exceed the proposed 10' x 12' in size, that the Building Inspector in conjunction with the home owner shall document for this property's file the foot print of the pavers and no further wetlands relief shall be considered for this property.**

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

Mr. Simmons reminded the applicant of the 30-day appeal period.

## **Other Business**

Case # 2007:19 – Robert and Laura Milliken. Correction to the vote of August 21, 2007 granting the variance request to Article IV, Section 406.9.

**Mr. Simmons moved and Mr. Batchelder seconded the motion to change the vote of August 21, 2007 from 4-0 in favor of granting the requested variance to Article IV, Section 406.9 to 3 in favor, 1 opposed and 1 abstention. Ms. Smith opposed and Mr. Simmons abstained.**

The corrected vote did not change the outcome of the original vote. Ms. Chase was directed to send a corrected decision letter to the Millikens.

Mr. Paul Sanderson of the Local Government Center suggested that the Zoning Board discuss each of the five criteria regarding a variance request but should not vote on them individually.

Ms. Smith investigated area Town Zoning Boards to see how they handled the five criteria and those Towns that she looked into did vote on the five criteria. She opined that the Board should continue to vote on the five criteria.

It was the consensus of the entire Board to continue voting on the five criteria individually for each variance request.

A motion was made and seconded to adjourn at 7:45pm with all in favor.

Respectfully submitted,

Wendy V. Chase  
Recording Secretary