



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, November 27, 2007 at 6:00pm
North Hampton Elementary School Music 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 (arrived at 7:00pm); Susan Smith, Jennifer Lerner and Richard Batchelder

Alternates present: None

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 6:03pm.

The Board reviewed the following correspondence:

- Town of Hampton ZBA decision letter granting a special exception to Aquarion Water thru Cellco Partnership dba Verizon Wireless to retrofit the existing water tank off of Exeter Road.
- Seminar on Consequences of land use policy presented by Donahue, Tucker & Ciandella, PLLC on Thursday November 29, 2007 at 7:00pm.

Mr. Simmons requested that Ms. Chase change the way the agenda is set up and put the property owner's names after the case number rather than the applicant's name.

The ZBA was in receipt of comments from the Conservation Commission regarding cases 2007:23, 2007:24 and 2007:25.

Mr. Simmons remarked that there were no attached minutes to the prepared comments from the Conservation Commission to show how the Commission arrived at their suggested denials of each of the applications they reviewed. He further commented that the ZBA had previously written a letter to the Conservation Commission requesting that they attach a copy of their minutes that pertain to their written comments. Both Ms. Smith and Ms. Lerner agreed.

Mr. Simmons asked Ms. Chase to draft a letter to the Conservation Commission regarding the aforementioned issue.

Mr. Simmons informed everyone that there was a copy of the Rules of Procedure available for anyone to view.

Ms. Chase stated for the record that the November 27, 2007 agenda was posted in the November 13, 2007 edition of the Hampton Union and posted at the Town Clerk's Office, Town Office and Library.

The minutes of October 23, 2007 were reviewed. It was determined that three of the regular members recused themselves from one of the cases and three alternates were seated. There were not enough members present to accept the October 23rd minutes. The members agreed to accept the portion of the minutes pertaining to the Goldstein case that the attending members sat on.

Mr. Simmons moved and Ms. Lermer seconded the motion to accept lines 255 through 396 of the October 23, 2007 minutes as amended.

The vote was unanimous in favor of the motion (4-0). Mr. Simmons, Ms. Lermer, Ms. Smith and Mr. Batchelder.

A discussion ensued regarding the Conservation Commission's written comments submitted to the ZBA and the Board determined that none of the applicant's received copies of the Commission's comments nor were initially notified of the Conservation Commission meeting of when their applications were reviewed.

Mr. Mabey left the meeting and went to the town office to get copies of the Conservation Commission's minutes and when he returned he passed out copies to each of the Applicant's that they pertained to.

The Zoning Board discussed different options to better facilitate the ZBA application review process between the ZBA and Conservation Commission.

Mr. Wilson spoke from the audience and reminded the Board that the Conservation Commission is an advisory Commission only and are not required to hold public hearings. The only legal obligation that they have is to properly post their agendas. Mr. Wilson agreed with the Zoning Board that the Conservation Commission should notify the Applicants of the meeting that their application would be discussed.

Ms. Chase was asked to include in the draft letter to the Conservation Commission the Zoning Board's request that the Conservation Commission send notification of their meeting to those applicants whose applications would be discussed by them.

Old Business

2007:22 – Andrew & Karen Goldstein, PO Box 343, Rye Beach, NH 03871. The applicants request a variance from Article IV, Section 409.9 for relief from the 100-foot wetlands setback. Property location: 10 Runnymede Drive, North Hampton, zoning district R-2, M/L 002-036. This case is continued from the October 23, 2007 meeting.

In attendance for this application:

Attorney R. Timothy Phoenix, Hoefle, Phoenix & Gormley, PA
Andrew Goldstein, Owner/Applicant
Sherri Davis, NHSC, Inc.
Ralf Amsden, Architect, Living Spaces Inc.
Peter Luciano, Jr., Builder

Mr. Simmons explained that there was a four member Board but Mr. Turchan was on his way and gave the applicant the option to proceed with their application or wait for Mr. Turchan.

Mr. Goldstein opted to wait for Mr. Turchan. While waiting for Mr. Turchan to arrive Attorney Phoenix handed out copies of updated plans for the members along with a letter from James Long, NHSC Inc. regarding the tidal marsh delineation.

Mr. Simmons explained to the other applicants on the agenda that the music room was only available until 10:00pm and gave them the option to continue their cases to the January 22, 2008 meeting since the ZBA does not meet in December.

Erik Dodier, case #2007:25 requested a continuance to the January 22, 2008 meeting.

**Mr. Simmons moved and Ms. Lermer seconded the motion to continue Erik Dodier, case #2007:25 to the January 22, 2008 meeting.
The vote was unanimous in favor of the motion (4-0).**

Mr. Turchan arrived at 7:00pm.

Attorney Phoenix explained the new submitted plan to the Board. He compared the 2004 site plan prepared by James Verra & Associates to the current proposed plan.

The **existing impervious coverage** is as follows:

House	7,954 square feet
Driveway	4,845 square feet
Tennis/Basketball	7,545 square feet
Patios	290 square feet
Total Coverage	20,634 square feet

The **proposed impervious coverage** is as follows:

House	10,483 square feet
Cabana	927 square feet
Pool	1,056 square feet
Patios/Pergola	2,409 square feet
Stone stairs	100 square feet
Concrete pads	70 square feet
Tennis Court	6,935 square feet
Total Coverage	21,980 square feet

Attorney Phoenix further explained the proposed amendments to the impervious surface on the original plan as follows:

- The proposed 988 square feet carriage house will not be built
- The proposed pool, deck and patio will be reduced in size resulting in an increase in distance from fresh water wetlands from 83.0 feet to 85.4 feet.
- The amendments result in the total impervious surface in wetlands buffer reduced from 627 square feet to 429 square feet.

Attorney Phoenix addressed the fresh water impervious surface run off issue that was discussed at the October 23, 2007 meeting and explained that Mr. Goldstein has proposed on the plan a pervious surfaced driveway, and installation of (3) three separate underground storage tanks to the plan where water run-off from the impervious surfaces, including the existing tennis court will be directed to go into and used as necessary for irrigation.

Attorney Phoenix addressed the question of NHDES jurisdiction. He referred to a letter from James H. Long, CPSS, CSS, CWS, Vice President of NHSC Inc. reporting the completion of a tidal marsh delineation conducted at 10 Runnymede Drive by NHSC, Inc. on October 25, 2007. In his letter he explained that the tidal marsh delineation was conducted in accordance with the 1987 Army Corps of Engineers wetlands Delineation Manual using the routine determinations method, as required by the NH DES Wetlands Bureau and the US Army Corps of Engineers. Based on the delineation done by James H. Long, Ms. Sherri Davis, NHSC, Inc. wrote a letter stating that the purpose of the tidal marsh delineation was to identify the edge of the tidal marsh to determine State jurisdiction on the Goldstein property and stated that the tidal marsh is located greater than 250' from the nearest proposed surface alteration, therefore, the proposed project is not within the State 100' tidal buffer zone or the 250' jurisdiction under the Comprehensive Shore land Protection Act. The proposed project is only subject to the Town of North Hampton's 100' wetland buffer.

Attorney Phoenix reiterated his defending arguments to the five criteria he submitted at last month's meeting.

Mr. Simmons noted for the record that each of the ZBA members visited the Goldstein property.

Mr. Simmons asked what the history of the property was. Mr. Luciano explained that the prior house was torn down to the main deck except for the right wing.

Ms. Smith questioned how the drainage off of the tennis court would be addressed.

Mr. Luciano explained that a drainage system would be installed all around the tennis court, which would direct the run-off water into the underground tank. Ms. Smith asked if there were a formula used in determining the size of the drainage pipes. Mr. Luciano explained that the size of the drainage pipes have not yet been determined, but once they decide on which system they will be using then they will be able to determine what size drainage pipes to use that would accommodate the run-off and any over splash.

Mr. Luciano explained that the determination of the size of the underground tanks is calculated by the square footage of the roof and how much run-off each roof will be responsible for. He further explained that 1 inch of rain equals 6,000 gallons of water run-off so they determined the size of the tanks to hold 2 to 3 inches of rain.

Mr. Simmons voiced concerns on the lack of specification plans regarding the drainage system. Mr. Luciano argued that they came up with the concept so it's not possible to go to a particular source to provide specifications.

Mr. Simmons swore in witnesses, including those that had already spoken, and opened the meeting to public comments of those opposed to the application.

Mr. Peter Dodge, 14 Runnymede Drive, explained that in his previously submitted letter to the Board he wrote of his opposition to the proposed application, but after hearing the applicant's proposal to install underground tanks to store fresh water run off and use the water for irrigation he said that he is more inclined to support the application.

Mr. Simmons referenced Mr. Dodge's letter where he wrote "the restoration of the saltwater marsh, an ecological project on which large sums from a variety of governmental agencies have been spent".

Mr. Phil Wilson, 9 Runnymede Drive, said that he appreciates everything the Goldstein's are proposing in regards to protecting the marsh. He voiced concerns on the degree of perviousness of the driveway and said that there is pervious and impervious, but there are degrees of pervious surfaces and suggested that the ZBA find out the degree of perviousness regarding the pavers. Mr. Wilson also suggested that the applicants may want to use leaching catch basins rather than sealed catch basins.

Mr. Wilson brought forth an aerial map of North Hampton done by the USGS of the office of State Planning, dated 1998. He said that based on the aerial map and the 1994 US Department of Agriculture Soil Survey for Rockingham County, in 1998 the area in which the soil scientist classified as a fresh water marsh was a salt-water marsh. Mr. Wilson said the question of rainwater on the marsh is not an issue because the rain is diluted by the tides twice a day. Mr. Wilson

suggested that the Board require a stormwater drainage analysis report as a condition of approval and to also add a condition that no more impervious surface be allowed on the Goldstein lot.

Mr. Turchan said that it was not a requirement of the ZBA to mitigate water on any property, but further added that Mr. Goldstein's drainage proposal is an excellent opportunity to mitigate the first 3 inches of rain and a huge step in fixing the problem of fresh water flowing into the marsh.

Mr. Wilson suggested that the Zoning Board obtain an independent engineering opinion before making a decision on the Goldstein's variance request. He suggested that the ZBA consult a soil scientist and an engineer qualified to do storm water management modeling to find out whether or not what the Goldstein's are proposing would make the situation of freshwater drainage into the salt marsh better or worse?

Mr. Goldstein stated that it is not his problem to mitigate the marsh problem that was created in 1906, and opined that he has come up with a drainage proposal that far exceeds the correction of fresh water flow into the marsh with the amount of fresh water flow that would come off of his proposed 429 square feet of impervious surface in the buffer.

Mr. Simmons said he would like to commend Mr. Goldstein on the drainage plan that he proposes, but would like to see a more level of detail on how the drainage system would work.

Mr. Luciano commented that he has worked with Mr. Goldstein on the drainage proposal that has taken a lot of time, money and effort and has brought forth a plan that they felt would make everyone happy, especially the town with all of the town water they would be saving by storing the rain water in the underground tanks they would save around 60,000 gallons of water per year.

Ms. Lerner opined that most everyone agrees that the proposed drainage system is a great idea, but the Board needs to vote on specifics rather than good ideas. Ms. Lerner further commented that the Board needs more specifics on how the drainage system is going to look and work.

Mr. Batchelder said that common sense should be used and that it doesn't really matter what kind of drainage system you have when dealing with a 100-year storm.

Gail Caroline, 11 Runnymede Drive, asked what the utilities that generate the pipes would look like. Mr. Luciano said that they would be underground. She also asked about snow removal on the driveway and Mr. Luciano explained that it would be stored on the front of the driveway.

Mr. Caroline, 11 Runnymede Drive, wanted to recognize what the applicant has done with all of the enhancements and modifications they have done. Mr. Caroline questioned enforcement issues. Mr. Mabey explained that he inspects the property and makes sure they comply with the approved plan.

Ms. Lisa Wilson, 9 Runnymede Drive, stated that she too is impressed with Mr. Goldstein's proposed drainage plan. She said that she would be in favor of granting the variance providing the Board adds a condition of approval stating that the initially proposed carriage house never be built.

Mr. Turchan stated that anyone else in the neighborhood has the right to put up a 3,000 or 4,000 square-foot barn if they meet their setbacks without any restrictions, and the Goldstein's have the right to build within their setbacks like everyone else.

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Ms. Smith asked Ms. Wilson if Mr. Goldstein wanted to build a carriage house in the future if he would need to go before the Runnymede site committee for approval and Ms. Wilson confirmed that he would.

Mr. Simmons said that it is one thing if the applicant comes before the ZBA in the future to build something outside of the setbacks but if he proposed to build the carriage house in the original location it would be within the building envelope. Mr. Simmons suggested that the applicant increase the gallon capacity of tank 1 to handle projected structure water runoff.

Mr. Goldstein said that he does not intend on building the carriage house at this time but would be willing to mitigate any water from future structures with the same methodology currently presented. He said that tank number 1 is designed to include the carriage house water run off calculations.

Attorney Phoenix stated that the Goldstein's can not be responsible for the degradation of the salt marsh and opined that it is unreasonable to conclude that the recession of the salt marsh, if it has occurred, is because of the Goldstein's property. He said that there are many factors involved regarding the degradation of the salt marsh, such as climate, acid rain and global warming. Attorney Phoenix requested that the Board not continue the case until January, but instead to approve the variance request with conditions.

Mr. Simmons closed the public comment session.

Mr. Simmons recessed the meeting at 9:20pm.
Mr. Simmons reconvened the meeting at 9:25pm.

Mr. Simmons moved and Mr. Batchelder seconded the motion to grant the variance from Article IV, Section 409.9 for relief from the 100-foot wetlands setback with the following conditions: (1) Storage of snow removal shall be placed as depicted on the plan by Builder, Peter Luciano and marked as exhibit A, (2) The pool shall have an eco-smart, chemical-free system (consistent with the October 23, 2007 ZBA minutes), (3) future increase of impervious surface greater than 988 sq. ft. shall require a water mediation plan consistent with the plan, (4) All construction shall be consistent with the plans and any other documentation submitted with the application by the applicant, and (5) the applicants shall submit to the Building Inspector a certified drainage plan, which successfully accomplishes all of the drainage as proposed for up to 3 inches of rain in a 24-hour rain storm. The vote was unanimous in favor of the motion (5-0).

New Business

2007:23 – William A. & Agnes Hawke Estate, C/O Citizens NH Investment Service, 875 Elm Street, Manchester, NH 03101. The applicant requests variances from (1) Article IV, Section 409.8.A to construct a septic system within 75-feet of the wetlands and (2) from Article IV, Section 409.9.A.2 to construct a new home within 50-feet of an inland wetland on an approved building lot of record. Property location: Maple Road, M/L 006-040, zoning district R-2.

2007:24 – William A. & Agnes Hawke Estate, C/O Citizens NH Investment Service, 875 Elm Street, Manchester, NH 03101. The applicant requests a special exception under Article IV, Section 409.12 to construct a home within 50-feet of an inland wetland on a vacant approved building lot of record. Property location: Maple Road, M/L 006-040, zoning district R-2.

In attendance for these applications:

Wayne Morrill, Jones & Beach Engineering Company

Mr. Morrill explained that he was before the Board for both a variance request and a special exception. The variance request pertains to the proposed septic and the Special Exception request pertains to the proposed house.

Mr. Morrill requested a continuance for cases 2007:23 and 2007:24 to the January 22, 2008 meeting due to the fact that the music room is only available until 10:00pm to the Board.

Mr. Simmons moved and Ms. Lerner seconded the motion to continue cases 2007:23 and 2007:24 to the January 22, 2008 meeting.

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

Mr. Simmons moved and Mr. Batchelder seconded the motion to adjourn the meeting at 10:00pm.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary