



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, February 26, 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; Susan Smith, Jennifer Lerner and Richard Batchelder

Alternates present: Marc Lariviere

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 6:07pm.

Mr. Simmons called for a pledge of allegiance.

Mr. Simmons commented on the vote taken at the January meeting to add a disclaimer to the application for relief and abutter notification memo explaining that the Conservation Commission reviews ZBA applications without notice to the applicant.

Ms. Chase confirmed that the application and memo have been updated to reflect the addition of that disclaimer.

Mr. Simmons explained that the Rules of Procedures was available for anyone to review.

Mr. Simmons swore in witnesses.

Ms. Chase stated that the February Agenda was properly posted in the February 5, 2008 edition of the Hampton Union and posted at the Library, Town Clerk's Office and Town Offices.

Minutes

Mr. Simmons recused himself from voting on approving the October 23, 2007 minutes.

Ms. Smith assumed the Chair.

Ms. Lermer moved and Mr. Batchelder seconded the motion to accept the minutes of October 23, 2007. The vote was unanimous in favor of the motion (4-0).

Mr. Simmons resumed the Chair.

Mr. Simmons made amendments to the January 22, 2008 meeting and agreed with amendments suggested by Mr. David Buber in a letter he sent to the Board, dated February 15, 2008.

Mr. Simmons moved and Ms. Lermer seconded the motion to accept the minutes of January 22, 2008 as amended. The vote was unanimous in favor of the motion (3-0-2). Mr. Batchelder and Ms. Smith abstained because they were not present for that meeting.

Ms. Lermer reported to the Board that Mr. Ted Turchan is doing well after his recent surgery. Mr. Simmons spoke on behalf of the Board stating that the Board sends prayers and support to Mr. Turchan and look forward to his return to the Board.

Old Business

2007:25 – Erik Dodier, 149 Mill Road, North Hampton, NH 03862. The applicant, Custom Pool, 323 Shattuck Way, Newington, NH, requests a variance from Article IV, Section 409.9.B. to construct an in-ground pool within the 100-foot wetland setback. Property Owner: Erik Dodier, property location: 149 Mill Road, M/L 012-030-024, zoning district R-2. This case is continued from the January 22, 2008 meeting.

There was no one in attendance for this application.

The Board was in receipt of a letter from Mr. Dodier requesting a continuance of his case #2007:25 to the April 22, 2008 meeting.

Ms. Lermer encouraged the Board to visit Mr. Dodier's property to get a better understanding of the layout of his lot.

Mr. Simmons moved and Ms. Smith seconded the motion to approve the request to continue case #2007:25 – Erik Dodier, 149 Mill Road, North Hampton, to the April 22, 2008 meeting. The vote was unanimous in favor of the motion (5-0).

New Business

2008:01 – Guy Davis and Barbara Cassani, 11 Cotton Farm Road, North Hampton, NH 03862. The applicants request a variance from Article IV, Section 409.9.B. to allow an in-ground pool and safety fence within the 100-foot wetlands setback. Property owners: Guy Davis and Barbara Cassani. Property location: 11 Cotton Farm Road, M/L 006-133-012, zoning district R-2.

There was no one in attendance for this application.

The Board was in receipt of a letter from Attorney Loughlin on behalf of Attorney Pelech's clients, Mr. Davis and Ms. Cassani, requesting a continuance on case #2008:01 to the March 25, 2008 meeting.

Mr. Simmons moved and Ms. Smith seconded the motion to grant the request to continue case #2008:01 – Guy Davis and Barbara Cassani, 11 Cotton Farm Road, to the March 25, 2008 meeting.

Ms. Lermer suggested that each member visit the property and said that the proposed pool site is staked out on the property providing a good visual of how the proposed pool would look on the lot.

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

Mr. Simmons stated that there was an additional public notice regarding a request for rehearing scheduled to immediately follow the regular ZBA meeting.

Ms. Chase stated that the notice was properly posted in the February 15, 2008 edition of the Hampton Union, posted at the Town Clerk's Office, Town Offices and Library.

Motion for rehearing

Request for rehearing cases 2007:23 and 2007:24 – Citizens Bank, Trustee of the William A. and Agnes Hawke Trust, submitted by Attorney Peter J. Saari, Casassa and Ryan Attorneys at Law on behalf of his client Citizens Bank, Trustee of the William A. and Agnes Hawke Trust.

In attendance for this application:

Attorney Saari, Casassa & Ryan Attorneys at Law

Ms. Smith stated that she was not present at the January 22, 2008 meeting and therefore did not sit on the aforementioned cases, #2007:23 and 2007:24 and asked to be excused. Ms. Smith was excused.

Mr. Batchelder was not present at the January 22, 2008 meeting and recused himself from the rehearing request discussion.

Mr. Simmons asked if Attorney Saari had any objection to having a three-member Board. Attorney Saari said that he did not.

Mr. Simmons explained that under RSA 677:2 Motion for rehearing, that any party of action may apply to the ZBA for a motion for rehearing and that even though the Board holds a public meeting to discuss it, it is not a public hearing, it is more of an administrative matter. He further explained that the Board is not legally bound to take in public comment but may do so if they so desire.

Mr. Simmons further explained that in the past it has been common practice for the Board to deliberate and vote on each of the five criteria of the variance test on all variance request

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applications. He stated that this act was not preformed when the Board deliberated on and voted to deny case 2007:23 – Hawke Estate at last month’s meeting, January 22, 2008, and for this reason felt it necessary to grant the request for rehearing so that the Board may correct the mistake and make it a more complete record.

Mr. Simmons also noted that Attorney Saari included in his request for rehearing, a revised plan. Mr. Simmons explained that if the motion for rehearing were granted then the Board would be rehearing the original case #2007:23 and would not consider the revised plan in their deliberations. Mr. Simmons suggested that the Board vote to approve the request for rehearing, hold the rehearing and make sure the Board vote specifically on the five criteria.

Ms. Lerner questioned whether or not the Board members that heard the case originally had to be the same members to sit on the rehearing? Mr. Simmons said, “yes”. She also reminded the Board that she and Mr. Turchan’s terms would expire in March 2008 and if they were not reappointed then there could possibly be two new members by the time the rehearing would take place.

Mr. Mabey explained that the members would remain on the Board even if their terms expired up until the time their successor was appointed by the Board of Selectmen to replace them. Ms. Chase showed the Board a copy of the bulletin from the Local Government Center confirming what Mr. Mabey said and referenced RSA 41:3. There was also a section in that bulletin stating that newly appointed members were able to vote on a rehearing request even if they were not involved with the case originally.

Mr. Simmons moved and Mr. Lariviere seconded the motion to grant the request for a rehearing on cases 2007:23 and 2007:24.

Mr. Simmons opened the meeting to public comment.

Mr. David Buber, 4 Maple Road said that he had no objection to a rehearing as long as the ultimate outcome remains the same as the January 22nd meeting.

Mr. Simmons explained that the Board would not be able to guarantee that the outcome would remain the same and apologized that during the original case that each of the five criteria was not specifically voted on.

Mr. Buber then said that he did object to a rehearing and opined that the meeting in January was conducted in good faith in accordance with the law and statute and was a valid vote, 5-0 to deny the variance. He further stated that he is familiar with cases Simplex v. Town of Newington and Boccia v. Town of Portsmouth and that regarding the five prong test the one prong for “hardship” does not override the other four prongs.

Mr. Simmons agreed that the “hardship” criterion does not override the other four criteria of the variance test.

Ms. Lerner asked if the Board was legally bound to vote specifically on the five criteria for variance request applications. Mr. Simmons did not know for sure but stated that in order to be consistent with prior applications that have come before the ZBA then it would be prudent to do so for this case too.

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

Mr. Simmons moved and Ms. Lermer seconded the motion to add the rehearing of cases 2007:23 and 2007:24 to the March 25, 2008 ZBA agenda as the first matter under “Old Business”.

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

Attorney Saari said that his client would be submitting a new application. The Engineer is trying to put together a plan that would balance the interest of the abutters, the owner and the Town in general.

Mr. Simmons reminded Attorney Saari of the application deadlines. Ms. Chase said that the application submittal deadline for the March 25, 2008 meeting was Friday, February 29, 2008 by 2:00pm.

Mr. Simmons explained that by granting the request for a rehearing on cases 2007:23 and 2007:24 there is no final decision on those cases giving the applicant the opportunity to submit a new application. He further explained that the March agenda will include the rehearing of cases 2007:23 and 2007:24 under “Old Business” and if Attorney Saari submits a new materially different application it will be added to the March agenda under “New Business”.

Mr. Simmons stated that in the interim the Board would seek legal counsel to see whether or not the applicant is able to submit a new application when the original application has been granted the request for a rehearing.

Mr. Batchelder was reseated.

Mr. Simmons moved and Ms. Lermer seconded the motion to adjourn at 7:05pm.

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

Respectfully submitted,

Wendy V. Chase
Recording Secretary