



**REGULAR MEETING MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
Tuesday, March 25, 2008 at 6:00pm**

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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; Ted Turchan, Vice Chairman; Jennifer Lerner and Richard Batchelder.

**Alternates present:** None

**Members Absent:** Susan Smith

**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 6:13pm.

Mr. Simmons suggested that the Board consider the “old business” item 3 first so that the remaining Hawks cases would be grouped sequentially, and asked if anyone had any objections to that. There were no objections.

Mr. Simmons called for a pledge of allegiance.

Mr. Simmons explained that there was a four member Board due to illness and gave the applicants the opportunity to continue their cases to a meeting with a full member Board. Both applicants chose to proceed.

Mr. Simmons reminded the members of the letter received from Attorney Whitelaw on the legal opinion she gave for the Hawks rehearing cases and new cases.

Mr. Simmons swore in witnesses.

Ms. Chase stated that he agenda was legally and properly posted in the Hampton Union’s March 11, 2008 edition and also posted at the Library, Town Clerk’s Office and Town Office.

Minutes

Mr. Simmons moved and Ms. Lermer seconded the motion to approve the February 26, 2008 meeting minutes.

The vote was unanimous in favor of the motion (3 in favor, 0 opposed and 1 abstention). Mr. Turchan abstained because he was not present at the February 26, 2008 meeting.

Old 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. This case is continued from the February 26, 2008 meeting.

In attendance for this application:

Barbara Cassani, Owner/applicant  
Attorney Peter Loughlin  
Chris Albert, Jones and Beach Engineering  
Mr. McPherson, Builder

Attorney Loughlin gave a history on the subject property:

- The property is part of the Boulder subdivision, originally known as lot #12 consisting of 4.61 acres
- A lot line abandonment and lot consolidation plan was approved by the Planning Board on September 18, 1998 resulting in lot #12 absorbing some of lot 13 and lot 13 being eliminated increasing lot #12 to 5.81. acres
- Applicant tried to locate the pool on the property where they would not need any variance relief but were unsuccessful

Attorney Loughlin submitted copies of the plans of the original subdivision (D-23763) and the lot line change (D-26599) into the record.

Mr. Albert submitted copies of the site plan with existing conditions and a copy depicting the proposed pool and fencing.

Attorney Loughlin explained the impacts on the wetlands:

- Total lot area = 252,942 SF (5.81 Acres)
- Total uplands = 172,420 SF (68.2%)
- Total wetlands = 80,522 SF (31.8%)
- Area within 50 ft setback = 80,511 SF
- Area within 100 ft setback = 24,271 SF
- Wetlands Impact: 600 SF impact from the pool = 60 SF impact from the new deck – 331 SF from the old deck to be removed = **529 SF impact**

The applicant also proposes to mitigate the wetland impact by adding 1200 SF of re-vegetated forest area.

Attorney Loughlin went over the five-point variance test:

1. There will be no diminution of value to the surrounding properties because surrounding properties cannot see the pool.
2. Not contrary to public interest, he referred to case Chester vs. Rod and Gun Club decision where to be contrary to public interest the variance must unduly and by a marked degree conflict with the ordinance and violate the ordinance's basic zoning objectives, which he states that it does not.
3. Pertaining to consistent to the spirit and intent of the ordinance, the purpose of the buffer is to protect the wetlands not to necessarily protect the buffer itself. The area around the pool is all lawn area and doesn't feel that the pool will have a negative impact on the wetlands
4. Substantial justice will be done, he opined that the benefit to the public is not offset by the injury it will cause to the landowner
5. Unnecessary hardship exists, he said that special conditions on the lot are the shape and size of the lot and that the house was constructed when the setback requirement was 50-feet so the arrangement of the building on the lot was based on that setback.

Ms. Cassani explained that her husband and children are serious swimmers and that the pool would be more for athletic use rather than recreational. The lap pool is 20' x 60' and 4' at one end gradually increasing to 8' at the other end. She further explained that the pool would be heated and covered with a solar cover that would allow rainwater to drain through.

Mr. Simmons said that he visited the property. He suggested several different options of where to place the pool so that it would not encroach into the wetland buffer.

Attorney Loughlin went over the different locations. He explained that the north side of the home is the garage, the left side of the home has the septic leach field, and the state requires a 35-foot setback from the leach field, if the pool were placed on the right side of the home it would be entirely in the wetlands buffer, and there is a grade change in the back of the house where the lawn drops down.

Mr. Simmons said that the Board was in receipt of two letters from the Conservation Commission concerning the proposed application. A letter dated February 19, 2008 and one dated March 18, 2008 both recommending that the ZBA deny the application. Mr. Simmons asked if the applicant had received a copy of the letter and she said that she did not. Mr. Simmons offered his copy of the March 18<sup>th</sup> letter for her to read.

Mr. Turchan commented that the proposal would impact the uplands wetlands and pointed out that the applicant would be replacing a portion of the lawn with 1200 SF of wetland producing plantings.

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

**Ms. Lermer moved and Mr. Batchelder seconded the motion to grant the variance request for case# 2008:01, Guy Davis and Barbara Cassani, for relief from Article IV, Section 409.9.B to allow an in-ground pool and safety fence to be constructed within the 100-foot wetland setback as shown on the site plan sheet C2 and include the re-vegetation area as shown on sheet C2.**

**Mr. Simmons made a friendly amendment seconded by Mr. Turchan to add the following conditions:**

- 1. Drainage of pool in preparation for winterization of the pool to be removed off site.**
- 2. Landscaping will be of pervious nature as proposed.**
- 3. The pad for the pool pump will be located in the general area as indicated on the amended site plan sheet C2 and the backwash from that pad be directed away from the wetland buffer.**
- 4. Applicant to use environmentally friendly non-chlorine alternative for chemical treatment of the pool.**
- 5. No further relief from wetlands setback will be granted for the property.**

**Ms. Lermer accepted the friendly amendment, seconded by Mr. Batchelder.**

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

Mr. Simmons called for a recess at 7:47pm.

Mr. Simmons reconvened the meeting at 7:55pm.

## **Zoning Board of Adjustment**

**March 25, 2008**

**Rehearing for 2007:23 – William A. & Agnes Hawks 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. Rehearing for this case was granted at the February 26, 2008 meeting.

**Rehearing for 2007:24 – William A. & Agnes Hawks 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. Rehearing for this case was granted at the February 26, 2008 meeting

The applicant agreed to proceed with the two new cases before the rehearing for cases 2007:23 and 2007:24.

## **New Business**

**2008:02 – William A. & Agnes Hawks 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 permit the construction of a new septic system within seventy-five (75) feet of wetlands and (2) from Article IV, Section 409.9.A 2 to permit the erection of a new home within fifty (50) feet of an inland wetland on a vacant approved building lot of record.

**2008:03 – William A. & Agnes Hawks 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 permit the erection of a new home within fifty (50) feet of an inland wetland on a vacant approved building lot of record.

In attendance for cases 2007:23, 2007:24, 2008:02 and 2008:03:

Attorney Peter Saari, Cassasa & Ryan  
Wayne Morrill, Jones and Beach Engineering

Mr. Simmons asked if the applicant received a copy of the Conservation Commission's opinion letter to the ZBA regarding all four of the Hawks applications dated March 11, 2008. Neither representative of the Hawks were aware of the letter. Mr. Simmons read the following March 11, 2008 Conservation Commission letter into the record:



North Hampton Conservation Commission  
Town of North Hampton

237 Atlantic Avenue  
North Hampton, NH 03862  
Tel: 603 964.8087  
Fax: 603 964.1514

March 17, 2008

North Hampton ZBA  
Town of North Hampton  
North Hampton, NH 03862

RE: ZBA Cases # 2008-02 and 0-3

To Members of the ZBA:

At its scheduled meeting of March 11, 2008 the Conservation Commission reviewed and discussed the cases for wetlands setback variances on parcel M/L 006-040 and has recommendations as indicated below:

Cases 2007:23 and 2007: 24

Our position to recommend denial of the variances, as described in our letter to your Board of November 20, 2007 has not changed regarding these cases.

Cases 2008: 02 and 03

The Commission recommends that the variances be denied. The proposed locations of both the house and the septic system are, in our view, still too close to the wetland and the risk of increased surface water runoff to neighboring abutter property and wetlands is relatively high. Further, the proximity of the septic system to the wetlands continues to present a risk of wetlands contamination from a potential septic system failure.

Our Commission noted that the house itself is planned to be only six feet to the wetlands. It was our collective view that, pursuant to RSA:33 I (b) such approval would be contrary to the public interest and the spirit and intent of the wetlands setback ordinance is not observed.

It was also discussed that, although lot 006-40 may be a "lot of record", in our view, this does mean that it is a de-facto "building lot of record".

For the record, your board has approved two other variances for structures within 20 feet of wetlands within the past 9 months. We believe the continuation of such approvals is clearly contrary to the public interest.

Thank You for your consideration.

Very Truly Yours,

Chris G. Ganolis  
Chair

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Mr. Simmons explained that the Board received a legal opinion from Attorney Jae Whitelaw regarding all four of the William A. & Agnes Hawks Estate's applications currently before the Board. He explained that in Attorney Whitelaw's opinion the Board first needed to determine if the

new applications, cases 2008:02 and 2008:03, were materially altered and if it were determined as such, then the Board would proceed in addressing those applications.

Attorney Saari requested to withdraw the rehearing for cases 2007:23 and 2007:24.

**Mr. Simmons moved and Mr. Batchelder seconded the motion that the rehearing on cases 2007:23 and 2007:24 be withdrawn with prejudice at the request of the applicant. The vote passed (3 in favor, 0 opposed and 1 abstention). Ms. Lerner abstained.**

Ms. Burber asked for clarification of the vote made to withdraw the rehearing on cases 2007:23 and 2007:24.

Mr. Simmons explained to the abutters present that Attorney Saari opted to withdraw the rehearing requests, which would result in the original Board's decision of denial. Attorney Saari disagreed and asked that the requests not be withdrawn.

**Mr. Simmons moved and Mr. Turchan seconded the motion to withdraw the Board's previous vote to withdraw the rehearing cases 2007:23 and 2007:24. The vote passed (3 in favor, 0 opposed and 1 abstention). Ms. Lerner abstained.**

Mr. Morrill began his presentation with case 2008:02. He gave a history on the original application:

- The septic tank will be located in the front of the house.
- There would be a drive under garage and looking at the house from the road the front part of the lot would go up 3 to 1 side slope and the house would be 18" above that elevation.
- There was no house design
- There would be a large amount of fill and the mound would be so large that it would make the property an "eye sore".

Mr. Morrill said that Dick Bond from the Rockingham Conservation District did new test pits at the top of the lot where Chapel Road and Maple Road intersect and they "proved out" and meet the 50-foot State setback requirement. Mr. Morrill explained the changes made to the original application now presented as case # 2008:02 and # 2008:03:

- Move the leach field to the top of the lot, near the intersection of Chapel Road and Maple road
- The house footprint was reduced to 32' x 45' and a 24' x 24' garage was added
- The foundation would stick out 18' above the ground and the house would be level with the ground
- The septic tank itself would be placed in front of the lot and a force main would pump the septic system over to the designed leach field at the top of the lot
- The proposed basement is a 4-foot deep crawl space
- The setback from the building would be 17-feet from the wetland setback and maintained the 35-foot front setback for the building
- The driveway would be of pervious material and run up to a front loading garage
- The septic tank and pump chamber would meet the 50-foot wetland setback required by the State

Mr. Simmons said that the Board first needed to determine whether or not the new application was materially different.

Ms. Lermer stated that there were no plans of the house and asked how many bedrooms there would be?

Mr. Morrill answered that the proposal is for a four-bedroom house and the septic system is design to accommodate that. He said that if the house were reduced to three-bedroom then an entire row of the bio septic could be removed. He further stated that there is no wetland impact for the septic main line.

Mr. Morrill went over calculations on different sized septic systems:

- 4-bedroom system requires 600 gallons per day 1100 SF of suitable soil
- 3-bedroom house = 450 gallons per day with 825 SF of suitable soil
- 2-bedroom house = 300 gallons per day 650 SF of suitable soil

**Mr. Simmons moved and Ms. Lermer seconded the motion that the Board find that the new proposal is materially different from the old proposal. The vote was unanimous in favor of the motion (4-0).**

Attorney Saari noted for the record that the Conservation Commission letter was not accurate in stating that the relief was for six feet from the wetlands. Mr. Simmons said that the Board would take that mistake into consideration when deliberating over the case.

Mr. Morrill went over the changes again and reminded the Board that the lot has a very small building envelope. Mr. Morrill explained that the current elevation on the lot where the house would sit is 22-feet and they are proposing to construct the house so that the sill of the house is two-feet above that elevation totaling 24-feet, and the floor of the foundation would be above the seasonal high water table. He explained the proposed septic and said that the septic pump line would be 327-feet long and 1 ½ inch pipe that is solid without joints in it that pumps up to the leach field five times per day. There is enough storage in the tank to accommodate power outages for a few days. He explained that there is no need for an alternate site for a septic because the system is designed to be repaired in place by removing the end caps, leaving them off for at least 72 hours to kill the bacteria, and once the system is rejuvenated the caps are put back on.

Mr. Morrill explained that the excavation for the proposal would consist of digging for the septic, putting in the foundation of the house and backfilling it and putting in a line going up to the leach field. He said that the only clearing would be the small line of trees around the septic system itself.

Mr. Morrill stated that the proposed site for the septic has forested poorly drained soil.

Mr. Morrill did calculations on different sized homes and concluded that he would be able to design a septic that would accommodate a three-bedroom home that would meet the required setbacks so a variance to Article IV, Section 409.8.A. would not be needed.

Marcia Buber, 4 Maple Road submitted two photos of the Maple Road lot taken on March 4, 2008, where the lot was cleared of trees that showed standing water on the lot. Ms. Chase entered them



into the record as exhibits 1 and 2. Ms. Buber said that she lives across the street and her crawl space is generally filled with water and when it's not it is moist. Mr. Morrill said that he proposed crawl space for the new proposed house would be a poured concrete floor that would have a sealed surface unlike a gravel floor where the water can come up through the floor.

Attorney Saari confirmed that the applicant no longer seeks the variance from Article IV, Section 409.8.A to permit the construction of a new septic system within seventy-five feet of the wetlands.

The Board proceeded to application 2008:03 – Special Exception.

Mr. Simmons read the conditions for a special exception under Article IV, Section 409.12.

Attorney Saari responded to them:

- A. The property has been an official lot of record since at least April 1949 when the Hawks purchased the lot.
- B. The new home is a permitted use in the R-2 zone and would conform to all of the North setback requirements.
- C. There is no other location on the lot within, which the home could be constructed outside of the buffer.
- D. No reasonable and economically viable use of the lot can otherwise be made because of the limitation of the wetlands district.
- E. The house is designed to be as far away from the wetlands as reasonably possible, and consistent with the wetlands protection purposes laid out in Section 409.1. He opined that it would be consistent with the spirit and intent of the ordinance.

Mr. Simmons questioned whether or not the application satisfied condition E of the special exception requirements *the design and construction of the proposed use will, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance.*

The Board determined that per the zoning ordinance the house had to have at least 720 sq. ft. of living space (24' x 30' house).

Mr. Morrill calculated different options to determine how far away from the wetlands buffer a building of 720 sq. ft. of living space would be, and it came out to be 37-feet away from the wetlands buffer.

Mr. Bill Gosselin, 67 Atlantic Ave., voiced concerns of the impact on the wetlands as well as the possible diminution of value to his property because if the trees on the proposed lot were cut then he would have a full view of the Lamprey oil trucks. Mr. Morrill said that the trees on that side of the lot would not be cut down.

Ms. Buber voiced concerns on setting a precedent if the Board allowed a building on the lot that would encroach so close to the wetland buffer.

Mr. Turchan said that any disposition of any case that the Zoning Board decides does not set a precedent because each case is handled on it's own merits.

**Zoning Board of Adjustment**

**March 25, 2008**

Attorney Saari suggested that the Board grant the special exception and add conditions to the approval.

Mr. Mabey suggested the Board be careful on exactly what the Board approves concerning added decks or patios, etc.

Mr. Simmons closed the public hearing on the special exception.

Ms. Buber opined that the main issue on the application is the encroachment on the wetlands and felt that the discussion was “funneling down” to how much can be built on such a small area.

Ms. Lerner commented that the owners have owned the property for years and zoning ordinances have changed throughout those years. She opined that it was unfortunate that the applicant could not come up with a house design that would reasonably fit on the lot.

Mr. Turchan commented on the fact that if the Board insists on a building too small then it would not “fit in” with the neighborhood.

**Mr. Turchan moved and Mr. Batchelder seconded the motion to continue cases 2008:02 and 2008:03 to the April 22, 2008 meeting.**

Mr. Simmons stated for the record that there is no guarantee of what the Board’s decision would be on either application.

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

**Mr. Simmons moved and Mr. Batchelder seconded the motion to grant the applicant’s withdrawal request for cases 2007:23 and 2007:24.**

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

**Mr. Simmons moved and Ms. Lerner seconded the motion to adjourn at 9:55pm.**

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

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

**Approved April 22, 2008**