



**REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, April 22, 2008 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, Sr., Chairman; Susan Smith, Richard Batchelder, Robert B. Field, Jr., and Michele Peckham

Alternates present: Richard Stanton

Members Absent:

Staff present: Wendy Chase, Recording Secretary

Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report

Mr. Simmons convened the meeting at 6:05pm.

Mr. Simmons called for a pledge of allegiance.

Mr. Field questioned why the pledge of allegiance was called for since it was not part the of the Board's Rules of Procedure, and it might lead to be intimidated for those in the audience who might not be in a position to undertake such pledge.

Mr. Simmons explained that the Board started beginning each meeting with a pledge of allegiance a couple of months ago and deemed it appropriate to do so.

The Board was in receipt of a letter from Craig Salomon requesting to withdraw his case, #2008:04.

Mr. Simmons recused himself.

Ms. Smith assumed the Chair.

Mr. Field asked if there was a reason stated in his letter for the request to "withdraw"? There was no reason.

Mr. Field voiced concerns over the fact that unilateral withdrawals of applications impact people, especially abutters that may have hired legal counsel on their behalf regarding his application, and who might be present or prepared for the meeting.

Ms. Smith asked if anyone from the audience was present for the Salomon application, case #2008:04. There was no one present.

Mr. Field moved and Ms. Peckham seconded the motion to grant Mr. Salomon's withdrawal request for case # 2008:04.

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

The Board was in receipt of a letter from Erik Dodier requesting to "continue" his case, #2007:25 to the May Zoning Board meeting.

Mr. Simmons commented that Mr. Dodier has had several continuances granted by the Board and suggested that if the Board grants this request that a stipulation be added that no further continuances be granted on this case.

Mr. Field moved and Ms. Smith seconded the motion to grant Mr. Dodier's request to continue case #2007:25, and that it be the last continuance granted for this case.

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

Mr. Simmons referred the Board's attention to the Superior Court decision on the Dow vs. North Hampton ZBA appeal on the Salomon case. Mr. Field began to comment on one of the elements in the Court's decision regarding timely filing of evidence and Mr. Simmons ruled that all comments regarding the Court case are out of order because the matter had not been publicly noticed for discussion. Mr. Field began to comment on the Zoning Board's Rules of Procedure and Mr. Simmons did not allow it because he felt that Mr. Field was comparing the Rules to the Decision on the Salomon case. Mr. Simmons advised Mr. Field that any proposed changes to the Rules of Procedure could be taken up at a later date. Mr. Field asked that it be noted for the record that he was not making a comment on the Salomon case, but rather on the Rules of Procedure and whether or not the rules are clear on this matter.

Mr. Simmons introduced the members to the audience. He asked newly appointed members, Robert Field and Michele Peckham if they had been sworn in and they responded that they had.

Minutes

Mr. Simmons explained that there were only two members of the Board present that attended the March 25, 2008 meeting. Ms. Smith was absent but offered to vote on them on behalf of Mr. Simmons and Mr. Batchelder's recommendation.

Mr. Simmons moved and Mr. Batchelder seconded the motion to accept the minutes of March 25, 2008 as written.

The vote passed (3 in favor, 0 opposed and 2 abstentions). Mr. Field and Ms. Peckham abstained.

Mr. Simmons noted that the first order of business on the agenda was the Organizational Meeting to select a Chair and Vice Chair and suggested that the Board take up the applications on the agenda first and save the business of the Organizational Meeting to the end.

Mr. Field questioned Chairman Simmons' decision and commented that it was his recollection while serving on the ZBA for ten years that historically the first meeting following the Selectmen's appointments of ZBA members began with an organizational meeting. Mr. Simmons said that there was no such rule in the Rules of Procedure and felt that it would be in the best interest of the audience to begin with the applications before them. Mr. Field disagreed with Mr. Simmons. Ms. Smith opined that as long as the organizational part of the meeting took place at this meeting it didn't matter to her whether it was at the beginning or the end of the meeting. She further commented that there were a couple of cases that may take some time deliberating and suggested the Board begin with them and wait until the end of the meeting for the organizational part. Ms. Peckham stated that she agreed with Mr. Field but opined that the organizational part may be a little more difficult than typical so opted to wait to hold it until the end. Mr. Batchelder agreed to wait until the end of the Meeting also. Mr. Field withdrew his comment.

Old 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. Property owner: William A. & Agnes Hawks Estate, Property location: Maple Road, M/L 006-040, zoning district R-2.

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. Property owner: William A. & Agnes Hawks Estate. Property location: Maple Road, M/L 006-040, zoning district R-2.

In attendance for these applications:

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

Mr. Simmons gave a brief history on the Hawks Estate cases:

- The Hawks applications came in last year under alternate theories, cases 2007:23 and 2007:24. The Board denied case 2007:23 and voted not to act on case 2007:24 because it would have been moot.
- The applicant's Counsel submitted a motion for rehearing on both cases, 2007:23 and 2007:24, and at the same time submitted two new applications, cases 2008:02 and 2008:03.
- Counsel withdrew the requests for rehearing on cases 2007:23 and 2007:24, and the Board determined that the new applications submitted were materially altered.
- The Board requested additional information and voted to continue cases 2008:02 and 2008:03 to the April 22, 2008 meeting.

- In the interim there have been two new members appointed to the Board and the Board had just received a new plan from Jones and Beach, which contradicts the suggested five-day filing period for filing of new information as set forth in the Board's Rules of Procedure, Section V.G.

Mr. Field commented on the fact that new evidence was presented just before the Meeting began, contradicting the Rules of Procedure, and voiced concerns about whether or not the notice posted and mailed to the abutters is accurate for the new Applications.

Attorney Saari said that the only change to the plan was that the house was scaled down.

Discussion ensued in regards to case 2008:02 and it was determined that the variance requests were no longer necessary. Attorney Saari requested that case 2008:02 be withdrawn.

Mr. Field moved and Mr. Simmons seconded the motion to accept the applicant's proposal to withdraw case 2008:02.

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

The Board proceeded with case 2008:03.

Wayne Morrill from Jones and Beach Engineering explained that at last month's meeting the Board recommended they come back this month with a house design that would fit on the Maple Road property.

Mr. Simmons swore in witnesses.

Mr. Morrill explained the plan presented:

- Three-bedroom cape style home with a front entry garage
- The proposed house conforms to the front set back requirement
- The closest corner of the proposed house is over 20-feet from the wetland buffer
- Crawl space foundation of 4-feet and the bottom of the foundation is above the seasonable high water table
- The septic system will meet the 75-foot setback requirement and will be located on the upper corner of the lot near the intersection of Maple and Chapel Roads.
- The original proposed house was 32' x 45' and the new proposal has been scaled down to 26' x 36'. It was noted for the record that there was an error on sheet S1 of the plan showing that the new house would be 32' x 45'.

Mr. Field asked Mr. Morrill if the house plan presented would be the actual house to be built if approved and Mr. Morrill opined that it would be.

Mr. Simmons asked if anyone from the audience wished to comment on whether proper notice was given or not.

Mr. Buber, 4 Maple Road explained for the benefit of the new members that his wife's family has owned the home at 4 Maple Road for over 50years and the Hawks Estate Maple Road lot has

always been vacant and opined that it has always been unbuildable. He further explained that the parcel is 2.1 acres and 1.2 acres of the lot is wetlands.

Mr. Simmons asked Mr. Buber if he thought he was properly notified and Mr. Buber replied “absolutely not” and explained why. He said that the Agenda listed case 2008:02 requesting the variance to the 75-foot setback for the septic and it was just withdrawn this evening after he did a lot of personal research by contacting DES and other Governmental agencies regarding this issue. Mr. Buber disagreed with Mr. Morrill’s implication that there is a buyer for the proposed house and said that the lot is owned by the Hawks Estate and being administered by Citizens Bank and opined that they are only trying to make the lot marketable by making it buildable. Attorney Saari indicated that he had no knowledge of the proposed house having been sold.

It was determined that Mr. Buber received sufficient notice on each case.

Attorney Saari began his presentation on case 2008:03, request for special exception Section 409.12 and opined that the application meets all of the special exception requirements.

Mr. Field questioned whether or not the Board had received a legal opinion regarding the issue the Conservation Commission brought up regarding a “lot of record” and a “building lot of record”?

Mr. Batchelder informed the Board that he received an email just before the meeting from Conservation Commission Chair, Chris Ganotis, informing the Board of a mistake he had made in the original letter regarding this case. He had omitted the word *not* in the last sentence in the third paragraph on cases 2008:02 and 03 in his letter to the Board dated March 17, 2008. The sentence should read: *It was also discussed that, although lot 006-040 may be a “lot of record”, in our view, this does **not** mean that it is a de-facto “building lot of record”.*

Ms. Smith commented that it would be a good time to finally get the issue resolved of whether or not a “building lot of record” and a “lot of record” are one in the same or are they two distinct entities?

Mr. Batchelder asked Attorney Saari what the property was being taxed for and how the town recognizes it? Attorney Saari did not know.

Mr. Field opined that the issue of “building lot of record” and “lot of record” is the predicate of the whole case and asked the rest of the Board if they should request Attorney Saari to brief the Board on it and said that the Conservation Commission, abutters and applicant are all focusing on this issue.

Ms. Smith made a motion to table case 2008:03 until the Board receives a legal opinion to what is considered a vacant approved “building lot of record”.

Mr. Field suggested saving the Town money by having Attorney Saari and Mr. Buber present the Board with a legal opinion on what is considered a vacant approved building lot of record.

Mr. Simmons suggested the Board seek their own legal opinion on the matter and suggested contacting the Local Government Center where the Town receives legal opinions at no charge to the

Town. He did add that a lot of times the Local Government Center advises the Board to seek Town Counsel on legal issues pertaining to Town Ordinances.

Ms. Smith amended her motion to include that if the Town receives an opinion from the Local Government Center that recommends the Board seek Town Counsel then at that point seek Town Counsel.

Mr. Simmons asked if Ms. Smith would agree to amend the Motion as follows: To table case 2008:03 for one month pending receipt by this Board of an opinion on the issue of how to interpret 409.12 particularly in regards to inclusion of the words “vacant approved building lots of record” and how that relates to “lot of record” and that in the first instance the Board would seek the opinion of the Local Government Center, and, if that is inconclusive then, the Board would seek an opinion from Town Counsel on the matter leaving the record open and publicly asking for written memorandum on the subject from Counsel for the applicant and from any interested party in the matter to be also taken into consideration. Ms. Smith agreed to the amendment. Mr. Field added that the Conservation Commission be given the same opportunity as well. Ms. Smith seconded the motion. The vote was unanimous in favor of the motion (5-0).

Ms. Smith requested the applicant come back to the Board with information on the assessed value of the property and the amount the property is taxed.

Ms. Peckham asked if it would be possible to have the location of the proposed house staked out so that she could get a visual of what the proposal would look like. Mr. Morrill said that he would do that.

Mr. Simmons moved and Mr. Field seconded the motion that case # 2008:03 be continued to the May 27, 2008 Zoning Board meeting. The vote was unanimous (5-0).

Mrs. Buber mentioned the clarification on Section 409.12 the Board sought. Mr. Field explained that the Ordinance uses “buildable lot of record” and the definitions in the Ordinance only give context to “lot of record”.

2008:05 – KNC Investments, LLC, PO Box 13326, Edwards, CO 81632. The Applicant, The Federated Companies, 535 Boylston St., Suite 203, Boston, MA 02116, requests a variance from Article IV, Section 406 to construct a canopy over a drive-thru area connected to a proposed banking facility extending approximately 14-feet over the 35-foot setback requirement. Property owner: KNC Investments, Property location: 26 Lafayette Road, M/L 003-101, zoning district I-B/R.

In attendance for this application:
Attorney Peter Saari, Cassasa & Ryan

Mr. Simmons recused himself.
Ms. Smith assumed the Chair.
Mr. Stanton was seated for Mr. Simmons.

Mr. Field questioned whether or not there was a Letter of Denial from the Building Inspector. There was not.

Ms. Smith explained that the Application originally went before the Planning Board, but confirmed that the Applicant did not apply to the Zoning Board on an Appeal of a Planning Board decision.

Mr. Field said that the ZBA has to have jurisdiction to hear the case either by an appeal from a decision of an Administrative Officer or an appeal of a Planning Board decision in which the Zoning Ordinance was interpreted.

Mr. Stanton questioned why condition #12 on the decision letter from the Planning Board stating that the canopy shall be modified so that it does not encroach upon the setback be the vehicle used to come before the ZBA for a variance request?

Attorney Saari explained that the Appeal from an Administrative decision is not just a decision from the Building Inspector but also would include a decision made by the Planning Board. Attorney Saari referred to the Administrative Officer as the Planning Board. After reviewing RSA 676:5 (III), the Board did not interpret it that way.

Mr. Field moved and Ms. Peckham seconded the motion to continue case #2008:03 to the May 27, 2008 ZBA meeting to permit the Administrative Officer to complete his review of the matter.

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

Mr. Simmons was reseated and resumed the Chair.

Organization of the Zoning Board

Mr. Simmons announced that as of April 23, 2008 he would be resigning from the Zoning Board of Adjustment and would be submitting a letter of resignation to Town Administrator Stephen Fournier. He went on to say that there has been a fundamental change in the way the Board is made up going from an appointed Board to an elected Board and explained that he has no intention of running for a seat on the Board next year. He opined that it may be a good idea to vacate a spot that the Selectmen can fill so the new person would have a chance to obtain some experience before deciding whether to run for Office next year. Mr. Simmons stated that it was a difficult decision to make because he always likes to finish what he starts.

Ms. Peckham asked if he intended to stay on until someone was reappointed in his stead and he said he would not.

Mr. Field commented that he and Mr. Simmons worked together on the Board in the past and worked on putting together the Board's Rules of Procedure. Mr. Field stated that Mr. Simmons has given great service to the Town and thanked him for his service.

Mr. Field moved and Ms. Smith seconded the motion to postpone the reorganization of the Board until the May 27, 2008 meeting.

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

Ms. Smith said that it has been a privilege serving on the Board with Mr. Simmons and that the knowledge that is required for this job and to stay current, to remain personable and to weigh both sides to do due diligence is not a job to be taken lightly. She commented that she has learned a lot working with both Mr. Simmons and Mr. Turchan. She further complimented Mr. Turchan on his service to the Board and on his wealth of knowledge. She also made mention of former member Jennifer Lerner and said how she admired and respected her.

Mr. Batchelder concurred with Ms. Smith.

**A motion was made and seconded to adjourn at 8:45pm.
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Minutes approved May 27, 2008