



**REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, May 27, 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: Richard Stanton, Chair; Richard Batchelder, Vice Chair; Susan Smith, and Robert B. Field, Jr.

Alternates present: Marc Lariviere

Members Absent: Michele Peckham

Staff present: Wendy Chase, Recording Secretary

Ms. Smith sat in as acting Chair prior to the Organization of the Board since she had the most seniority as a ZBA member.

Ms. Smith called the meeting to order at 6:10pm.

Ms. Smith noted for the record that Mr. Lariviere was seated for Ms. Peckham.

Ms. Smith called for a Pledge of Allegiance.

Mr. Field objected to the call for the Pledge of Allegiance.

The Pledge of Allegiance was recited.

Mr. Field called for a point of order.

Mr. Peter Simmons, from the audience, called for a point of order.

Ms. Smith recognized Mr. Field.

Mr. Field explained that he, along with other members of his family, are all Veterans, and stated that he respects the flag of the United States without qualification. Mr. Field opined that Applicants that come before the Zoning Board for one reason or another may be unable to say the Pledge of Allegiance, and it would put an undo burden on the Applicants to start the meeting with the Pledge of Allegiance, where some people are going to feel intimidated by it. Mr. Field suggested that the Board should place on the next agenda, under the first order of business, whether or not the board will continue to invite the audience to participate in the Pledge of Allegiance.

Ms. Smith recognized Mr. Peter Simmons.

Mr. Simmons stated for the record that he is a Veteran and feels very strongly that there is nothing wrong in saluting the flag. Mr. Simmons offered to prepare reasons for why the flag should be saluted and present it at next month's meeting. Mr. Simmons further spoke passionately on the reasons why people should salute the flag.

Mr. Field noted for the record that two of his relatives are disabled Veterans.

Mr. Stanton called for a point of order and was recognized by Chair Smith.

Mr. Stanton thanked Mr. Simmons for his comments and further stated that he would like to avoid casting dispersions on any person, and suggested that the Board continue with the meeting.

Mr. Stanton moved and Mr. Batchelder seconded the motion to continue with the meeting. The vote was unanimous in favor of the motion (5-0).

Organization of Board 2008-2009

Mr. Batchelder moved and Mr. Field seconded the motion to nominate Richard Stanton as Chair to the ZBA.

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

Mr. Stanton accepted the nomination.

Mr. Stanton moved and Mr. Lariviere seconded the motion to nominate Richard Batchelder as Vice Chair to the ZBA.

Mr. Batchelder accepted the nomination.

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

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

Mr. Stanton thanked the Board for voting him in as Chair and commented that he would do the best job possible.

Mr. Stanton swore in Witnesses and asked that all Witnesses state their names for the record. They are as follows:

Erik Dodier

Robbie Woodburn

Marcia Buber

Bill Gosselin

Attorney Peter Saari

Wayne Morrill

Ms. Chase stated that the May 27, 2008 ZBA Agenda was posted in the May 16, 2008 edition of the Hampton Union and also posted at the Town Clerk's Office, Town Office and Library.

Mr. Stanton referred to the three legal opinions (from the Local Government Center, Attorney Peter Saari and Building Inspector Richard Mabey) regarding the question raised at last month's meeting of what the difference is between "building lot of record" and "vacant approved building lot of record".

Mr. Stanton moved and Ms. Smith seconded the motion that for the purpose of the Zoning Board of Adjustment's ability to exercise its authority pursuant to Section 409.12 of the North Hampton Zoning Ordinance the terms "lot of record", "building lot of record", and "approved building lot of record" in the singular or plural will be considered indistinguishable from each other and mean the same as that as "lot of record" as defined in Article III, page 4 of the Zoning Ordinance.

Mr. Field questioned if Attorney Saari was writing his opinion letter as Counsel for the Town or Counsel for his client. It was determined that it was as Counsel for his client.

The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Field abstained.

Mr. Stanton suggested deferring the acceptance of the minutes to the end of the meeting and change the order of minutes to the end of the agenda after other business.

Mr. Field disagreed and pointed out that the minutes refer to the business of the current meeting, so it would be difficult to move onto the business of the meeting without first accepting the last month's meeting minutes. Mr. Field stated that the ZBA is the only quasi-judicial board of the Town.

Ms. Smith had no objection to deferring the minutes to the end of the meeting but said that Mr. Field makes a valid point because some of the minutes refer to the ongoing cases before the board at this meeting.

The board took up acceptance of the minutes.

Mr. Stanton disagreed with a proposed change to the minutes from Mr. Field regarding his comments on why he disagreed on reciting the Pledge of Allegiance. He further commented that if Mr. Field did make the comments in the proposed changes he did not hear them.

Mr. Field said that he did make the comments and suggested the changes remain and further commented that he raised those reasons not because he was not loyal to the United States and said that the Pledge is not done in Superior Court and to do it here where the witnesses may be intimidated is inappropriate.

Mr. Stanton commented that the Hampton Zoning Board does the Pledge of Allegiance and after doing extensive research on the Internet he learned that one-third of Zoning Boards that he surveyed in the country begin each meeting with the Pledge of Allegiance.

There were other minor changes made and clarified by Mr. Field to the minutes.

Mr. Field moved and Mr. Stanton seconded the motion to accept the meeting minutes of April 22, 2008 as corrected.

The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Lariviere abstained because he was not present at the April 22, 2008 meeting.

Mr. Field made reference to the vote taken at last month's meeting regarding the "lot of record" issue where if the Local Government Center could not give a conclusive answer to the question then the board would seek Town Counsel's opinion and he quoted the letter from the Local Government Center that states, "I would encourage you to involve your town attorney, who may be familiar with the history of this ordinance". Mr. Field opined that since it was an inconclusive statement to what it all means then the Board should seek Town Counsel for an opinion on "building lot of record" and "approved building lot of record".

Mr. Stanton said that the motion previously made and carried would make this topic a moot point.

Mr. Field moved that the Zoning Board act consistently with the text of the approved minutes of the April 22, 2008 meeting.

There was no second to the motion. The motion failed.

Old Business

Mr. Stanton informed everyone expecting to participate in the meeting that there was a copy of the Board's Rules of Procedure for their review.

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 April 22, 2008 meeting.

In attendance for this application:

Robert Woodburn, Landscape Architect

Erik Dodier, Owner/Applicant

Ms. Woodburn presented the new changes to the application:

- The proposed pool is 20' x 40'
- Will not remove existing vegetation
- The Well is at least 25' away from the pool
- Pool deck material is not yet determined

Ms. Woodburn went through of the five-point variance test:

1. The proposal is in keeping with the *Spirit and Intent* of the ordinance because it provides the board authority in granting variances for projects that are not in line with the town zone.

2. Does not diminish surrounding property values, it may increase surrounding property values.
3. Denying the variance would create a hardship on the owner based on the special circumstances of the property such as the arrangements of the buildings on the lot
4. Substantial Justice would be done if granted because it would allow the owner to use his property to its full extent.
5. It's not contrary to public interest because they are not putting a chlorinated pool in and they are positioning the pool as close to the house as possible.

Ms. Smith stated that she walked the property and questioned why the pool could not be moved to a different area and explained where it may be moved but Ms. Woodburn said that it would still be within the 100-foot wetlands buffer setback.

Mr. Stanton explained that he looked at the wetlands map at the Town office and said that the very northern border of the lot is adjacent to very poorly drained soils; hence the reason the Conservation Commission recommends the ZBA deny the variance request. He further stated that if the pool were moved, as far away from the northern boundary it would be further away from the most sensitive portion of the wetlands.

Ms. Woodburn said that putting the pool further from the northerly border would make the rest of the useful land less useful.

Mr. Stanton voiced concerns on the backwash from the pool filter.

Ms. Woodburn said that the pool filter would be located on the pool deck and that the pool filtration system is a salt water system where the chlorination of the water happens inside a chamber, not in the pool itself.

Mr. Field said that according to the Land Conservation Plan for NH Coastal Wetlands that the area in question is considered one of the 47 most critical areas within the area of the study. He said that the area looks to be in an area of 38.4 acres of a high yield aquifer. He said that most of the homes on Mill Road have private dug Wells. He further stated that recently the US geonetic survey came out with a study of Southeastern New Hampshire of water quality both quantitatively and qualitatively and implored boards and communities to stave off anything that would cause harm to water resources.

Ms. Woodburn said that ZBA members must protect the public and balance that with the rights of property owners.

Ms. Smith said that she would like to see more information on the pool system that supports that it is not detrimental to the aquifer.

Mr. Field would like more information on what types of soils there are where the pool is to be located from a soils report.

Mr. Stanton moved and Ms. Smith seconded the motion to continue case# 2007:25 to the June 24, 2008, and in addition to the diagram that the Applicant provides a list of written specifications that he would be agreeable to.

Mr. Field made a friendly amendment to ask the Applicant to research and determine whether or not they are seeking all of the variances that are necessary; particularly giving attention to Section 414.

Mr. Stanton seconded the friendly amendment.

The vote passed (4 in favor, 0 opposed and 1 abstention). Ms. Smith abstained.

The vote to continue case 2007:25 to June 24, 2008 passed unanimously in favor of the motion (5-0).

Ms. Chase stated that the meeting on June 24, 2008 would be held in the Mary Herbert Conference Room.

Mr. Stanton recessed the meeting at 7:35pm.

Mr. Stanton reconvened the meeting at 7:37pm.

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. This case is continued from the April 22, 2008 meeting.

In attendance to for this application:

Attorney Peter Saari, Casassa and Ryan

Wayne Morrill, Jones and Beach Engineers

Mr. Stanton gave a brief history regarding the application:

- November 2007 case 2007:23 – Variance request and case 2007:24 – Special Exception
- Cases 2007:23 and 2007:24 were continue to January 2008 where case 2007:23 was denied making case 2007:24 moot.
- February 2008 a motion for rehearing was approved and the cases were continued to March 2008.
- March 2008 new applications were filed, case 2008:02 – variance request for a 4-bedroom house and septic in a new location and 2008:03 – Special Exception; rehearings for cases 2007:23 and 2007:24 were deferred until 2008:02 and 2008:03 were heard, then 2007:23 and 2007:24 were withdrawn and then reinstated. Cases 2008:02 and 2008:03 were heard and continued to April 2008 and cases 2007:23 and 2007:24 were withdrawn.
- April 2008 case 2008:02 was withdrawn because the new location of the septic meets the setback requirements and case 2008:03 was continued pending a legal issue regarding “building lot of record”.

Wayne Morrill explained the new plan that was submitted at the April 22, 2008 meeting along with a wetlands delineation and functional assessment of the wetlands on the subject property done by West Environmental.

Mr. Morrill explained that the current proposal is for a 26' x 36' ranch style house and referenced the wetlands assessment that determined there are poorly drained soils on the lot, but no very poorly drained soils. He noted that the Oil Company adjacent to the property is paved right up to the wetlands boundary and all of the areas roadways and house lots drain into the area depicted on the plan. He further explained that the water drained onto the property drains into a pipe across Atlantic Avenue and eventually into the salt marsh.

Mr. Stanton questioned what the concrete pipe with a concrete cover was located on the property. Mr. Morrill speculated that it was an old abandoned well and it would be decommissioned through NH DES. Mrs. Buber submitted pictures of the suspected Well into the record.

Attorney Saari informed the Board that the current assessment of the subject property is 192,400.00.

Attorney Saari commented on the fact that there is little case law on Special Exceptions and mentioned his earlier submittal referencing case Blagbrough Family Realty Trust vs. A & T Forest Products Inc., 155 N.H. 29, 43 (2007). He opined that the Applicant is not proposing anything odd; they are proposing a single-family home in a residential area and presenting a reasonable use in a reasonable way with this particular property and particular location.

Mr. Field referred to Section 601 – Exception where it states the exception would help to promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare and asked Attorney Saari to demonstrate how granting the requested Special Exception would promote those things.

Attorney Saari said that Section 601 was a definition of Exception and the actual mandate that helps the Board to determine the outcome of the case is within Section 409.12.

Mr. Stanton asked Mr. Morrill to confirm that there are .91 acres of uplands on the subject property as stated in previous minutes. Mr. Morrill confirmed that there is 39,800 square feet of uplands on the property, which calculates to be .91 acres. He also pointed out that the State of NH DES did not approve the septic as of yet because they require requested Variances and Special Exceptions to be approved by the Town prior to State approval.

Mr. Stanton asked if there have been specifications done for the proposed driveway and Mr. Morrill answered that there have not been and commented that the Applicant is willing to put in a driveway made of impervious material for less impact on the wetlands.

Mr. Bill Gosselin, 2 Maple Road, commented that the Town has ordinances for a reason and the proposal before the board does not “come close” to the setback requirements.

Ms. Marcia Buber, 4 Maple Road, said that she lives directly across the Street from the subject lot and referred to previous comments made by Mr. Morrill regarding the removal of trees and the additional impact it has on the wetlands area. She opined that at least 20 trees would need to be cut down to build the proposed house and that would create a detrimental impact on the wetlands.

Ms. Smith said that when she walked the property that it was very dry. Mr. Gosselin said that it gets much more wet closer to the adjacent Lamprey property.

Mr. Field questioned whether or not a tax return was filed on the property and if there was an appraisal of the property in the probate inventory? Attorney Saari said that he was not involved in the probate estate at all. Mr. Field said that the information would be relevant to the final decision.

Ms. Smith voiced concerns about potential buyers who are not familiar with the area and the potential seasonal flooding that takes place on the property.

Mr. Stanton said that under the laws of disclosure that information would be provided to any potential buyer.

Mr. Field opined that the townspeople have made it clear at past Town Elections of their concern over the protection of the wetlands. He said that restrictions placed on approvals do run with the land but it does not prohibit anyone from seeking relief of those restrictions in the future.

Mr. Stanton suggested that the board deliberate over the criteria under the special exception 409.12.

Mr. Batchelder referred to section 409.12.E, and opined that the request to build a structure 21.6 feet from the buffer where 50-feet is required is not consistent with the “spirit” of the ordinance.

Mr. Stanton closed the public hearing at 8:40pm.

Mr. Field remarked on the letter from the Conservation Commission recommending denial of the application. Mr. Stanton confirmed that the letter was put into the record at the March 25, 2008 meeting. Mr. Field also mentioned the letter in opposition of the proposal from Joanne Lamprey whose property abuts the subject lot.

Mr. Stanton moved to approve the Special Exception for the Hawks Estate, case #2008:03. There was no second to the motion. The motion failed.

Mr. Field moved and Mr. Lariviere seconded the motion to deny the request for Special Exception based upon the evidence presented.

Mr. Field opined that the request for the Special Exception does not meet the “spirit” of the ordinance and after much review of the wetlands ordinances and that there is no urgency in granting the request, he suggested that the board take a stand and say “no” to the request. He further pointed out that the location is in a critical area of the State that “feeds” the marsh and needs to be protected.

The motion failed (2 in favor, 1 opposed and 2 abstentions). Mr. Batchelder and Ms. Smith abstained.

Mr. Batchelder asked Mr. Field to clarify his reasons for moving to deny. Mr. Field said that through the Master Plan and the affirmation of the Master Plan by town vote and town surveys and determined through studies done by the Rockingham Planning Commission and the US Geonetic

survey there is a water quality and quantity crisis in this area and the advice to Towns is to protect the wetlands.

Mr. Stanton said that he is also concerned with the wetlands, but opined that implementing certain conditions such as reducing the footprint and using impervious material for the driveway, the lot could be made buildable for a family to enjoy the Town of North Hampton.

**Mr. Field moved and Mr. Batchelder seconded the motion to reconsider the vote.
The vote passed in favor of the motion to deny (3 in favor, 2 opposed and 0 abstentions).**

Mr. Stanton reminded everyone of the 30-day appeal process.

The board recessed at 8:55pm.

The board reconvened at 8:59pm.

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. This case is continued from the April 22, 2008 meeting.

In attendance for this application:

Attorney Peter Saari, Casassa & Ryan
Wayne Morrill, Jones and Beach Engineers

Attorney Saari explained that the proposed bank and canopy have been conditionally approved by the Planning Board and during deliberations it was discovered that the canopy encroaches on the 35-foot setback requirement. The Applicant wishes to obtain relief from that setback requirement.

Mr. Field asked if emergency vehicles were able to pass around and under the canopy. Mr. Morrill said that the proposed canopy is 16' high and would accommodate the passage of emergency vehicles.

Attorney Saari presented his case and stated the following:

1. It is in the public's interest to be reasonably comforted when using the drive-thru and the canopy would protect the public from weather.
2. Substantial Justice – banking institutes require these types of canopies and the public expects them.
3. The proposed site is surrounded by commercial uses; the new canopy would not diminish surrounding property values.

Ms. Smith asked what material the canopy is made of. Mr. Morrill said that they typically use the same material as the main structure and said that the main structure would be shingled with vinyl siding.

Mr. Lariviere asked whether or not Mr. Paul Marston, and abutter to the proposed site, was notified. Ms. Chase confirmed that he was properly notified.

Page 9 of ~~1144~~

Ms. Smith moved and Mr. Field seconded the motion to approve the variance request for relief from the side setback requirement for case #2008:05, Applicant, KNC Investments with the following conditions: (1) the canopy to be designed so that emergency vehicles of any sort be able to go through and go behind and come around the building and (2) the design of the canopy be complimentary and keeping with the primary structure. The vote was unanimous in favor of the motion (5-0).

New Business

Mr. Stanton referred to the letter from the Town Administrator, Steve Fournier to the Zoning Board requesting the board's input on how many alternates the board wishes the Select Board to appoint.

Ms. Smith commented on the recent resignation letter from Alternate member Ron Dupuis and the way that his letter alluded to the fact that there were convolutions going on. She further said that she is saddened that two of the three experienced board members were not reappointed by the Select Board and Mr. Marston's reappointment as an alternate is "on hold". She said that she would like to see the Select Board consider Mr. Turchan and Ms. Lerner as alternates and reappoint Mr. Marston because of their experience from serving on the Zoning Board.

Mr. Field said in the past the ZBA has always alternated the alternates so there would be no question of the board purposely placing an alternate on a certain case. He referred to RSA 673:6I(a) that states the board may have up to five alternates, but it is not mandatory and opined that three would be sufficient.

Mr. Stanton said that the Select Board are expecting a response from the Zoning Board and asked the members if they had any suggested names of people to ask.

Mr. Field opined that the ZBA members should not be involved in the selection of people to serve on the Zoning Board, and that the board should respond by informing the Select Board that three alternates would be sufficient for the Zoning Board and that the board would intend on using the alternates in a rotating process.

Ms. Smith commented that the ultimate decision is the Select Board, but in the past the Select Board have asked for the Zoning Board Chair's input on ZBA candidates.

Mr. Batchelder commented on the knowledge Mr. Turchan has of the Zoning Ordinances and how it was always helpful during case deliberations.

Mr. Field remarked that the Select Board were only asking the ZBA how many alternates the board wanted and that is the only question they should answer.

Mr. Stanton will reply to the Select Board's request.

Mr. Field said that he would like to go over some possible changes to the Rules of Procedure. One of the changes to consider changing is the time of the meeting from 6:00pm to a later time. Mr.

Stanton said that he has suggested modifications to the Rules of Procedure also, such as establishing better communication between the ZBA and the Conservation Commission.

**Mr. Field moved and Ms. Smith seconded the motion to change the regular meeting starting time from 6:00pm to 6:30pm in whichever room the board meets.
The vote was unanimous in favor of the motion (5-0).**

Mr. Field commented that the board's rules do not mandate that material needs to be submitted at least five days prior to the meeting, it only encourages it, and if the board wants to make it mandatory it should re-write its rules.

Mr. Field commented on the ZBA application and why it involves the five-point variance test. He said that it is important information but should not be part of the application because it may limit the Applicant.

Mr. Field suggested the board assess changes to the Rules at a future meeting.

The board deliberated over an Applicant's request for reimbursement for the application fees because the application was withdrawn.

Mr. Stanton opined that the only fee not expended was the recording fee of \$35.00.

Ms. Smith suggested that a disclaimer be added to the application that the fees are non refundable.

**Mr. Batchelder moved and Ms. Smith seconded the motion to deny Mr. Salomon's request for reimbursement of the application fees.
The vote was unanimous in favor of the motion (5-0).**

A motion was made and seconded to adjourn the meeting at 9:55pm with all in favor of the motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary