



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, June 24, 2008 at 6:30pm
Mary Herbert Conference 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, Chairman; Richard Batchelder, Vice Chairman; Susan Smith, Michele Peckham and Robert Field, Jr.

Alternates present: None

Members Absent:

Staff present: Wendy Chase, Recording Secretary

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

Mr. Stanton called for the Pledge of Allegiance.

Mr. Stanton called the meeting to order at 6:33pm.

Ms. Smith called for a point of order.

Chairman Stanton recognized Ms. Smith.

Ms. Smith moved and Mr. Field seconded the motion that the topic to add reciting the Pledge of Allegiance at each meeting in the Zoning Board's Rules of Procedure be discussed before any other business.

Mr. Field asked to be given the opportunity to express himself when the appropriate occasion arises regarding this topic.

Mr. Stanton suggested that the one item of "Old Business" be dealt with first and then proceed to the Pledge of Allegiance topic. The board agreed.

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 May 27, 2008 meeting.

The board was in receipt of a letter from Mr. Erik Dodier requesting a withdrawal of his application for a variance, case 2007:25.

Ms. Smith moved and Mr. Field seconded the motion to accept Mr. Dodier's request to withdraw his application, case 2007:25.

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

Other Business

Proposed revisions to the Zoning Board of Adjustment's Rules of Procedure.

Mr. Stanton distributed a revised draft of the original draft to the proposed revisions to the Rules of Procedure and explained that the new changes were a result of information received by the Town Administrator. He further explained that the election of members in March 2009 is as follows:

1 member to be elected for a three-year term

2 members to be elected for a two-year term

Both Susan Smith and Richard Batchelder's terms expire in March 2010.

Mr. Stanton referred to the executive summary for the draft ZBA Rules of Procedure and explained that his intentions were to adopt the revisions to the Rules of Procedure or at least to take the opportunity of the "light" agenda and discuss the proposed revisions.

Mr. Field commented that he has been away for the past three weeks and did not have an opportunity to review the proposed revisions. He further commented that when the rules were originally adopted it took several sessions to go through them and contemplate them and opined that it would be a precipitous act to assess the massive amount of business without an opportunity to fully understand it and discuss it.

Mr. Stanton referred to "order of business", section 5M, page 8 and said that adding the Pledge of Allegiance was the only substantive change from the "Order of Business" in the current Rules of Procedure. Mr. Field questioned the reference to RSA 194:15-c and Mr. Stanton responded that it was the New Hampshire School Patriot Act and gave Mr. Field a copy. Mr. Stanton opined that kids can be taught patriotism by example and by reciting the Pledge of Allegiance while doing the People's business would be setting a good example to the kids.

Ms. Smith moved and Mr. Batchelder seconded the motion to accept the change to the "order of business" by incorporating the Pledge of Allegiance into the "order of business".

Mr. Field said that the Zoning Board by Statute is a quasi-judicial board and that there is no Court in the State of New Hampshire that sits in a judicial capacity, which adopts the Pledge of Allegiance as a predicate to beginning its business. Mr. Field further stated that there are people who come before the board who are unable to adopt or subscribe to the Pledge of Allegiance. He voiced concern that those people may perceive the process to be biased or unfair to them. Mr. Field said that the zoning board members take an oath of office without bias in an open and objective way and

opined that it would be a violation of the oath of office to compel members of the audience coming before the board and feel alienated when asked to say the Pledge of Allegiance. He further stated that he has no objection to the board saying the Pledge of Allegiance, but should make clear to those in the audience that by not standing to say the Pledge of Allegiance that it would not be held against them.

Mr. Field stated that he has no objection to saying the Pledge of Allegiance as part of the board's order of business if that is what the majority of the board wants, but the board should make it clear that members of the audience are not compelled to say the Pledge of Allegiance.

Mr. Stanton said that he has researched other town's different board's procedures and many have incorporated reciting the Pledge of Allegiance.

Mr. Stanton opened the meeting for public comment.

Joe Kutt, New Road, said that he took offense to Mr. Field's comments and opined that if any member of the board were in a different country they would follow their protocol out of respect for them.

Ralph Fatello, Commander of American Legion Post 35, said that the issue has grown out of proportion and that Mr. Field has created a controversy and made the issue bigger than what it is. He further stated that he believes Mr. Field is a Patriot and an American. He asked Mr. Field to join the American Legion and Mr. Field agreed to do so.

Mr. Field said he has no problem saying the Pledge of Allegiance. He said he recites the pledge more often than once a week because of his other duties with the Government. Mr. Field opined that reciting the pledge is creating the impression that if someone in the audience that has business before the board and does not take the pledge then the board would be negatively influenced by that action.

Ms. Smith stated: "We're at war, that's the bottom line." She said that everyone has lost sight of that. Ms. Smith said that there is no reason the board needs to make a statement before reciting the pledge stating to those that by not reciting the pledge it would be held against them by the board.

Colonel Lessard, asked Mr. Field if he took the Oath as an Officer and Mr. Field answered "yes". Colonel Lessard asked if Mr. Field rescinded the Oath he took and he answered, "no". Colonel Lessard said the Oath states *I support and defend the Constitution of the United States against all enemies both foreign and domestic and I will bear true faith and allegiance to the same*. Colonel Lessard commented that it is embarrassing to see someone of Mr. Field's military status to not stand and recite the Pledge of Allegiance.

Peter Simmons, Ocean Blvd., said that he took offense to Mr. Field's comments. He opined that the ZBA does a wonderful job and would not hold it against applicants before them that choose not to say the Pledge of Allegiance.

John Anthony Simmons, Walnut Ave., said that he was on the Zoning Board for over five years and in that time not one foreign national came before the board with an application. Mr. Simmons

said that his family donated American Flags to the Town after September 11, 2001 and that the Zoning Board has always recited the Pledge of Allegiance when there was a flag in the room.

Mr. Field said that he has made his point that he has no objection to the board saying the Pledge of Allegiance on their own. He further stated that he did not understand how the distinction couldn't be made as of how the board's actions would not be perceived by others. He said that if people are here at the meeting who are not nationals and for some reason do not wish to take the pledge they should not be made to feel discriminated against.

Mr. Field made an amendment to the motion on the floor to adopt the pledge but to make it clear before the board adopts it that failure by any party that wishes to come before the board to join in on the pledge will not be held against them, or words to that affect.

Ms. Peckham seconded the amended motion.

Ms. Peckham explained that she seconded the motion because it reiterates a know fact that the Zoning Board meets and cannot judge people upon anything except on the application and the facts before them and apply that to the law, so restating the fact that the board would not hold it against anyone choosing not to take the pledge is not harmful.

Ms. Smith said that she was offended that the board would need to make this kind of disclaimer.

Mr. Stanton called the question on the amended motion.

The motion failed (2 in favor, 3 opposed and 0 abstentions). Mr. Stanton, Ms. Smith and Mr. Batchelder were opposed.

Mr. Stanton called the question on the original motion.

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

Mr. Stanton referred back to the executive summary. He explained to the board that he took sections from the standard zoning board rules written by New Hampshire Office of Energy and Planning (NH OEP) and incorporated them into the current Rules of Procedure, and all of current rules that were changed were listed on the executive summary for the board to discuss and maybe approve.

Mr. Stanton said that it was a good time to make changes to the rules prior to the March Town election when the board would become an elected board instead of an appointed board.

Mr. Field commented that March 2009 would be a more appropriate time to change the Rules of Procedure to the elected board's standards.

Discussion ensued over the legality of changing the Rules of Procedure and whether or not the board should vote on each of the five criteria or just to prove that discussion took place on all five points of the variance test.

Mr. Stanton said that there is nothing in the rules that explains the application deliberation process.

The board reviewed the new proposed application that Mr. Stanton put together from the current application and the NH OEP standard NH zoning board application.

The board discussed the section of the application under “relief sought”. Mr. Field remarked that appeal from a Planning Board decision has to be an option within the application and cited RSA 676:5.III. Mr. Stanton disagreed and said that it is not necessary because it would fall under the option “appeal of decision of an administrative officer”. He further stated that all the applications he reviewed online in other area towns and the State application he has never seen the option to “appeal of a Planning Board decision”. The board decided to include the option “appeal of a Planning Board decision” in the application for relief.

Mr. Field opined that it is not wise to create six different applications because it leaves too much room for error in the application process creating more of a chance that it would be challenged in Court over an administrative mistake.

Ms. Smith commented that she would like to review the booklet that Mr. Stanton took the information from before making any decisions to change the rules.

Mr. Stanton referred to the executive summary number 1 – Election of members. Discussion ensued regarding the description of “primary” member and what constitutes residency. The members agreed to use the word *domicile* instead of *resident* of North Hampton.

Discussion ensued on notification to the Conservation Commission and Heritage Commission and abutter notification. It has come to the board’s attention that the Heritage Commission has month’s worth of certified ZBA notices left in their mailbox.

The board also discussed the lack of communication with the Conservation Commission. Ms. Peckham suggested that members of the ZBA contact the Conservation Commission members in person by asking to be placed on their agenda rather than writing letters back and forth. Mr. Field agreed and said that he would speak to the Conservation Commission at Thursday morning’s North Hampton Forever meeting and request that a member of the Conservation Commission attend the Zoning Board meetings.

Starting time for the Zoning Board meetings was discussed. It was decided that the board would meet at 6:30pm in the Mary Herbert Conference room. Mr. Field suggested that the board add to the application that the applicant estimate a time of how long it would take to present their case to help better determine the length of the meetings and whether or not the board would have time to hear a particular case.

Tie votes were discussed. Mr. Field said that the applicant is offered to wait to present their case before a five-member; if they opt to proceed with a four-member board and the vote is 2 in favor and 2 against then the application is denied.

The board agreed to postpone further discussion of the revised Rules of Procedure to the August 22, 2008 meeting.

The board discussed the ZBA application fees.

Mr. Field moved and Ms. Peckham seconded the motion to grant permission to Chairman Stanton to write a letter to the Select Board on the Zoning Board's behalf recommending an increase in the Zoning Board application fees by increasing the application fee from \$100.00 to \$125.00, \$50.00 for the filing fee, \$35.00 for the recording fee and increase the abutter notification fee from \$6.00 per abutter to \$8.00 per abutter to cover the cost of the return receipt.

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

Mr. Stanton suggested he write a letter to the Planning Board regarding suggested changes to the language in the zoning ordinance on *building lot of record* and *approved building lot of record*.

Mr. Field made suggestions to Mr. Stanton's proposed letter to the Planning Board.

Minutes

Mr. Field made changes to lines 477 and 478 of the draft minutes to change *if the board wishes to make it mandatory it should amend it's rules*.

Mr. Field moved and Mr. Batchelder seconded the motion to approve the May 27, 2008 meeting minutes as amended.

The vote passed (4 in favor, 0 opposed and 1 abstention). Ms. Peckham abstained because she was not present at that meeting.

Mr. Field suggested that any emails the Chair sends out should be copied to each board member.

A motion was made and seconded to adjourn at 9:35pm and the vote was unanimous in favor of the motion (5-0)

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Minutes approved August 26, 2008