



**TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
Meeting Minutes  
Tuesday, August 26, 2008 at 6:30pm  
Mary Herbert Conference Room**

Formatted

**DRAFT DRAFT DRAFT DRAFT**

---

*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:** None

**Staff present:** Richard Mabey, Building Inspector and Wendy Chase, Recording Secretary

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

Mr. Stanton called the meeting to order at 6:35pm.

Mr. Stanton called for a Pledge of Allegiance.

Ms. Chase reported that the agenda was properly posted in August 12, 2008 edition of the Hampton Union, and on the same date posted at the Library, Town Office and Town Clerk's Office. The agenda was also posted on the Town's web site.

Mr. Stanton explained the procedure of the meeting to the audience.

Mr. Stanton swore in Witnesses.

### **Unfinished Business**

The proposed revised "order of business" of the Zoning Board's Rules of Procedure was discussed.

**Ms. Smith moved and Mr. Batchelder seconded the motion to adopt the revised changes to the "order of business" of August 20, 2008 as presented.**

**The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Field abstained and stated his reason for abstaining was because he felt it inappropriate for this particular board as a quasi-judicial body to recite the Pledge of Allegiance.**

Discussion ensued regarding a response letter dated July 21, 2008 from Mr. Phil Wilson concerning the Zoning Board's decision with respect to understanding the meaning of section 409.12 of the zoning ordinance regarding "building lot of record".

Mr. Stanton read Mr. Wilson's letter into the record. Attachment 1

The motion made at the May 27, 2008 Zoning Board meeting is as follows:

***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.***

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

Mr. Stanton stated that the board has received an opinion on the meaning of "building lot of record," "lot of record" and "vacant approved lot of record" from Attorney Saari, the Local Government Center, the Building Inspector and Mr. Wilson. He further stated that it appears that the language in Section 409.12 needs to be clarified and the ZBA and Planning Board should work together to achieve that.

Ms. Smith said that she did not have a problem rescinding the aforementioned vote made at the May 27, 2008 meeting to determine that a lot of record, building lot of record and vacant approved 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" because that vote does not affect her one way or another in the way that she looks at a case.

Mr. Field agreed with Ms. Smith's suggestion to rescind the vote made on May 27<sup>th</sup>. He further stated that he abstained from that vote originally because he felt it was not sound at the time. Mr. Field also agreed with Mr. Stanton that the board should work with the Planning Board to clarify Section 409.12.

Mr. Field quoted from the Supreme Court case of Scott Ouellette v. Town of Kingston. The Supreme Court said "We construe the words and phrases of the regulations according to the common and approved usage of the language". He opined that it is difficult if that guidance is followed to interpret an approved building lot of record in any way other than the way Mr. Wilson describes it in his letter.

Mr. Stanton said that the terms are interpreted differently and that's why both boards should work together to create language that would help clarify such broad interpretation. He also mentioned that Mr. Wilson's letter was written in response to Mr. Stanton's letter and was not a Planning Board joint effort to send it.

Mr. Stanton commented that the reason he suggested to make the motion on May 27<sup>th</sup> was because the board was getting "hung up" on the different phrases, so in order to proceed with the application the board had to interpret the definitions to continue with the case at hand.

Mr. Field referred to the Hawks cases on the agenda and the affect the interpretation of Section 409.12 has on them.

Ms. Peckham called for a point of order and was recognized by the Chair. She reminded the board that they should only be discussing the interpretation of Section 409.12 and the opinions in Mr. Wilson’s letter and from the LGC. She further stated that she agreed with Mr. Field and that a “buildable lot of record” and “lot of record” are two different “animals” meaning two different things.

Formatted: Font: Not Italic  
Formatted: Font: Not Italic

Ms. Smith stated that it is well within the Zoning Board’s authority to determine whether a “lot of record” is a “building lot of record” or not.

Formatted: Font: Not Italic  
Formatted: Font: Not Italic

Mr. Stanton suggested that the motion made on May 27<sup>th</sup> regarding “building lot of record” be revised not rescinded.

Formatted: Font: Not Italic

**Mr. Stanton moved and Ms. Smith seconded the motion until Section 409.12 of the Zoning Ordinance is changed or the definition of terms is revised by the Planning Board or by the Governing Body, the Select Board, the term approved building lot of record shall be considered and treated as lot of record as defined in Article III, page 4, on a case by case basis.**

Mr. Field and Ms. Peckham agreed that they would be voting in the negative for the motion because the two terms are distinguishable.

Mr. Batchelder opined that each member made valid points and added that each case must be handled on a case by case basis.

**The vote failed (2 in favor, 2 opposed and 1 abstention). Mr. Batchelder abstained.**

**Mr. Field moved and Ms. Smith seconded the motion to rescind the vote taken at the May 27, 2008 regarding the interpretation of building lot of record and lot of record in its entirety. The vote passed (3 in favor, 1 opposed and 1 abstention). Ms. Peckham abstained because she did not vote on the original motion in May.**

**Motion for rehearing – Case 2008:03**, requested by Attorney Peter Saari on behalf of his client William A. & Agnes P. Hawks Estate, Citizens Bank, Trustee. This request is continued from the July 22, 2008 meeting.

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

Mr. Stanton explained that the motion for rehearing was a Zoning Board issue and that there would be no request for public input. He further added that he asked Attorney Saari to explain the motion for rehearing for the benefit of the members that were not present at the last meeting.

Mr. Field questioned whether or not Mr. Stanton conducted ex parte conversations with Attorney Saari prior to this meeting and he answered that he absolutely did not.

Attorney Saari stated for the record that he had not had prior conversations outside of the board hearing; ever.

Attorney Saari answered questions that were raised at the prior meeting that he did not have answers for.

- The concrete structure on the Maple Road property is a dug capped well.
- The Town has the property assessed for \$194,200
- The lot was appraised for \$60,000 thirty years ago and an independent appraisal of the lot was done on August 30, 2006 which gave a value of \$345,000.

Attorney Saari further stated that the reason for the rehearing is based on the fact that the application meets the requirements for a special exception and the board's decision to deny was unlawful and/or unreasonable.

**Mr. Field moved and Ms. Smith seconded the motion to approve the request for rehearing for case 2008:03 – Hawks Estate.**

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

Attorney Saari explained that he has two other cases for the proposed lot before the board. Attorney Saari was informed by the board that it was his decision on how to proceed.

Attorney Saari requested to continue cases 2008:03, 2008:06 and 2008:07 to the September 23, 2008 meeting.

**Mr. Field moved and Ms. Smith seconded the motion to accept the applicant's request to continue cases 2008:03, 2008:06 and 2008:07 to the September 23, 2008 meeting.**

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

**2008:08 – Stanley & Nina Knowles, 3 Cherry Road, North Hampton.** The applicant requests an appeal from an Administrative Officer on Section 302.30 and a variance to Section 406. Location: Cherry Road and Birch Road, Tax Map 018, lots 011, 014 & 102. This case is continued from the July 22, 2008 meeting.

In attendance for this application:

Attorney Peter Loughlin  
Stanley Knowles, Owner/Applicant

Mr. Stanton swore in Attorney Loughlin as a witness.

Mr. Stanton raised issues with the presented application:

1. The application was not applied for on the proper form.
2. The application was signed by Stanley Knowles and not Nina Knowles whose name appears on the tax records as a co-owner of the property.
3. The application form does not designate Attorney Loughlin as the Applicant's counsel for the application.
4. There is a Local Government opinion on whether or not the deed of book 3782 page 821 conveys a simple interest or just a right-of-way.

Page 4 of 15

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

5. An email from Chairman Ganotis of the Conservation Commission that indicates that there is potentially contaminated water supply in the vicinity of the Hobbs Farm next to the Knowles' property which sits on top of the Town's prime aquifer.

Mr. Stanton read the email from Mr. Ganotis into the record. Attachment 2

Mr. Stanton asked the board for guidance on how to handle the Knowles' application.

Ms. Smith referred to the memo sent by the Planning Board's Vice Chair Shep Kroner. Attachment 3

The memo describes a discrepancy in the March 6, 2006 Planning Board minutes stating a variance was applied for by Mr. Knowles and there is no such record of a variance being granted or even applied for. Ms. Smith said that the case is very confusing and would like to take a site walk on the property to get a better idea of the proximity of the pond to the present larger of the two buildings on the land. She would like more information before going forward with deliberation.

Mr. Field said that he had another line of concern regarding this case in that there appears to be a management of inflow of evidence and if the board feels that the evidence is incomplete then the applicant is asked to provide that evidence at the public hearing not prior to the meeting.

Mr. Stanton said that he asked Ms. Chase to ask the applicant to provide copies of the deeds which are a requirement in the application inclusion list.

Ms. Smith opined that it was not out of line for Mr. Stanton to request copies of the deeds prior to the hearing.

**Mr. Stanton moved that the ZBA defer accepting jurisdiction of case #2008:08 until all administrative errors are corrected and each ZBA member has performed a site walk of the property. The site walk will be based on the authority provided by the application dated June 17, 2008, and further more that the fees for the new application be waived.**

**Ms. Smith made an amendment to the motion and asks that the applicant provide a plan showing the delineation of the wetlands within the confines of the property.**

Ms. Peckham commented that the applicant should get a chance to present the case before requiring the applicant to provide further information and evidence. Mr. Field agreed with Ms. Peckham.

There was no second to Mr. Stanton's motion. The motion failed.

**Ms. Peckham moved and Mr. Field seconded the motion that the board hears case # 2008:08. The motion failed (2 in favor, 0 opposed and 3 abstentions).**

Ms. Smith asked for Attorney Loughlin's opinion.

Attorney Loughlin said that he appreciated getting the chance to address some of the procedural issues such as:

- Being made aware that the tax card was incorrect listing the owners to be Jeffrey Knowles instead of Stanley and Nina Knowles and has since been corrected.
- They later received the written denial letter from the Building Inspector.
- The language in the deed to the Youth Association states the conveyance is a right-of-way when in actuality it is land that was swapped where the Youth Association received an additional portion of land and the Knowles in return received a 1-acre parcel that goes out to the road that they referred to as the right-of-way.
- The application was signed by Stanley Knowles and not Nina Knowles and said that there is a case where two joint tenants owned property and one applied and one didn't and there was a dispute but the courts decided it was sufficient to get the application before the board with one signature.

Attorney Loughlin said that the application is simple and the applicant's request is for a minor lot line adjustment. He also stated that the ordinance does not prohibit improvements to land that sits on an aquifer.

Mr. Stanton said that the case will probably get further attention because the lot does sit on an aquifer and it has raised concerns of the Conservation Commission. He further stated that the board should perform a site walk of the property.

Attorney Loughlin opined that the application should just be for an administrative appeal only, not for a variance. He said that he feels his client does not need a variance, just a lot line adjustment from the Planning Board. He planned to apply to the Planning Board and it was Mr. Wilson and Mr. Mabey who said that Mr. Knowles would need a variance to the frontage requirement because they only had 88-feet of frontage. Attorney Loughlin explained that the applicant has a non-conforming lot where they only have 88-feet of frontage rather than 175-feet of frontage on a four acre lot and they want to make it an 11-acre lot; they are increasing the size of the lot not increasing the non-conforming aspect of the lot.

**Mr. Stanton moved and Ms. Smith seconded the motion to accept jurisdiction of case #2008:08.**

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

Attorney Loughlin presented a copy of the tax map to use as an example to help explain to the board why he feels his client does not need to apply for a variance to the frontage requirement. He highlighted a parcel with 100-feet of frontage with a single-family dwelling on it. He explained that if the owner of the land abutting the back of the property were to sell a 50-foot strip of land to add to the back of the property giving that lot 50-feet more depth that person would not need to seek a variance because the lot is becoming more conforming in terms of area but would stay the same in terms of frontage. He further explained that if a non-conforming use were to expand by increasing acreage it would not be permitted unless a variance is granted because it would be an increase to a non-conforming use.

Ms. Smith said that there is a non-conforming use going on because it is a R-1 district and a business is being conducted in that R-1 district, and opined that the application can't be compared with Attorney Loughlin's example as "apples to apples" in this instance.

Attorney Loughlin said that if additional relief is needed in the future than his client would apply for the necessary relief.

Mr. Stanton pointed out that the gravel pit business is "grandfathered" and would not be permitted today and is owned by Stanley Knowles. He asked if the new lot is created then does the non-conforming use (gravel pit business) go into the new? He further stated that with the proposed division of land it would create a new lot with new ownership and a non-conforming business located on top of an aquifer.

Ms. Smith asked Mr. Mabey to explain the administrative appeal.

Mr. Mabey explained that the property has had many divisions over the years. When the 1-acre lot that they call the right-of-way was created it has been used by the family as an access to the gravel pit and there is no record of a written right-of-way, in 1985 they created a 1-acre parcel and donated it to the North Hampton Youth Association and a right-of-way was granted to them from Mr. Knowles to gain access to the ball field. They created a 1-acre lot in 1985 with 85-feet of frontage that was non-conforming. Mr. Mabey opined that the applicant is trying to create a lot without adequate frontage.

Mr. Stanton swore in Mr. Wilson.

Mr. Wilson referred to the definition of non-conforming use: *Non-conforming use is any use or arrangement of structures or land legally existing at the time of enactment of this ordinance or any of its amendments, which does not conform to the provisions of this ordinance. \*3/10/81 so changing the geometry of the land is a change of the use.* He also referred to Section 501.2 that states *a non-conforming use may be continued but may not be extended, expanded or changed unless to a conforming use, except as permitted by the Board of Adjustment in accordance with the provisions of this ordinance.* The Planning Board has consistently handled cases that would change or expand a lot, which would not make the lot conforming by sending them to the ZBA for relief. Mr. Wilson said that he suggested Mr. Knowles come before the ZBA instead of starting with the Planning Board and then having to be sent back to the ZBA.

The board discussed whether or not the applicant should be applying for a use variance or an area variance.

Mr. Field opined that the applicant would need to apply for a use variance to expand on a non-conforming lot and an area variance for relief from the frontage requirement.

Attorney Loughlin explained that Mr. Knowles is requesting the lot line adjustment so that his son may apply for a septic system approval because as it stands you're only allowed one dwelling per lot. There is a barn on Stanley Knowles land but in order to receive a septic approval for the barn they would need to separate the barn from Stanley Knowles' lot.

It was explained that if area and use variances were granted than the applicant would need to go before the Planning Board for a lot line adjustment.

Attorney Loughlin encourage the members to conduct a site walk of the property and he will gather more information regarding the aquifer.

Mr. Field said that a member of the Conservation Commission should be present at the next meeting to support their comments regarding this case.

Mr. Knowles has documentation from the State that states that the Hobbs well is not in operation because of the Coakley Landfill. Mr. Field suggested the board receive a copy of the documentation for the record.

Mr. Stanton suggested the board conduct a site walk of the property and email Ms. Chase with times each member would be available. Ms. Chase informed the members that the site walk would need 24-hour notification.

The board discussed waiving the application fees and it was decided that the new variance request would need to be noticed and the fees could not be waived.

Attorney Loughlin requested on behalf of his client Stanley Knowles to continue case #2008:08 to the September 23, 2008 meeting.

**Mr. Stanton moved and Mr. Field seconded the motion to continue case #2008:08 to the September 23, 2008 meeting so as to provide the applicant time to correct any administrative errors and if necessary file an additional application. The vote was unanimous in favor of the motion (5-0).**

Mr. Stanton recessed the meeting at 89:40pm.  
Mr. Stanton reconvened the meeting at 89:48pm.

**2008:09 – Christopher Bolton, Trustee of Christopher J. Bolton Revocable Trust-2001, 1225 River Road, Weare, NH 03281.** The applicant requests a special exception under Article IV, Section 409.12. Location: 24 Ocean Boulevard, Tax M/L 001-040. This case is continued from the July 22, 2008 meeting.

In attendance for this application:

Attorney Peter Saari, Casassa & Ryan  
Christopher Bolton, Owner/Applicant  
Eric Mitchell, Eric C. Mitchell & Associates, Inc.  
Michael Lambert, Environmental Scientist

Mr. Saari explained that Mr. Bolton's lot is the fourth lot in a four-lot subdivision that has received septic approval and that the other three lots have homes built on them. He further stated that the lot is assessed by the Town for \$539,300 and Mr. Bolton has received variances from Little Boar's Head Zoning Board. The request is to build a home on the site.



Eric Mitchell performed the wetlands delineation as well as the septic design and survey for the property. He explained that because the ordinance allows 75-feet from the wetlands setback if the parcel is less than 16,000 square feet that is how the plan is depicted. Mr. Mitchell went over the history of the lot.

- The existing septic system was approved in 1976
- 1966 approved and signed plan by the North Hampton Planning Board depicting lot C (Mr. Bolton's lot). The original location was done in 1966 than in 1970 all the lots along the road got deeper. He provided a copy of the plan to the members and for the record.
- 1971 another plan was approved by the Planning Board which puts the 1966 and 1970 plan together.
- 1976 a septic system was approved for the lot and the system was built but was never used.
- A complete survey of the site has been performed by Mr. Mitchell.
- Prior to beginning site improvement activities, the single family home's septic system will need NHDES Subsurface Division's approval and because American Beach Grass was identified on the property and the plant's status, proposed upland site activities require a Wetlands Bureau permit. It also falls under the comprehensive shoreland protection act, which will be handled at the same time the DES looks at the wetlands permit.

Mr. Mitchell explained that the reference line used by the shoreland protection act is the highest tide line. He further explained that existing lots of record do not have to fully comply with all facets of the act.

Ms. Smith asked which facets of the shoreline protection act they would not be able to comply with. Mr. Mitchell said the percentage in pervious area won't comply.

Mr. Mitchell explained that they have a planting regiment in place with salt marsh tolerant plants and within the 75-foot setback they will add 9,100 square feet of fill.

Mr. Mitchell explained that the road grade is 11-feet above sea level and the back of the proposed house will be 12-feet above sea level. There will be 3-feet of fill toward the back of the house tapering off to 1-foot of fill in the front of the proposed house.

Mrs. Lisa Wilson questioned the proposed 150-foot retaining wall that depicts retaining up to 6-feet of soil. Mr. Mitchell explained that wall itself may be 6-feet tall buried in the ground and there may be sections of the retaining wall that will retain more soil.

Ms. Smith questioned Mr. Mitchell's credentials. He explained that he is a licensed New Hampshire land surveyor, Wetlands Scientist and licensed septic system designer. He said that he was not a licensed engineer but has licensed engineers working for his company.

Mr. Mitchell explained that the driveway will be made up of pavers that are 30% to 40% pervious, there will be gutters on the house and leaching catch basins that will direct the water run off to go into the ground.

Mr. Mitchell explained that he met with the Conservation Commission and they had little comment. Mr. Lambert explained that the Conservation Commission held a special meeting and had a list of concerns regarding this project which they addressed.

Mr. Lambert explained the proposed site improvement planting and seeding plan to the board. The plant material is saltwater tolerant and grow well in the hydrology. Some of the plants are endangered species. He explained that because there is American beach grass on the site the State requires that a standard dredge and fill application be filed, which he has done. He said that the retaining concrete block wall will be ground level on both ends and the wall will not be visible from the road or from the abutting properties.

Mr. Stanton asked if Mr. Lambert knew of any variance requests for RSA 483:B that would be required for the proposed project. Mr. Lambert confirmed that there would be no variance requests regarding RSA 483:B.

Attorney Saari said that the applicant wishes to construct a house that conforms to the area and a lot of effort has been put into the plans to make that happen. He said that it has been a lot of record prior to 1988 and a single family dwelling is an allowed use in this zone. He further stated that they worked with the Little Boar's Head Zoning Board and the plan is a result of the negotiations agreed upon by both parties.

Mr. Field said that the Conservation Commission suggested that the ground floor living area should not be larger than 720-square feet. A member of Mr. Mitchell's company said that including the first floor, deck and utility room there is 2,350-square feet.

Mr. Stanton opened the public meeting at 9:40pm.

Dr. Arena opined that the proposed building would stand out as a negative not a positive, and commented on the storm last year that looked like "Niagara Falls".

Mr. Goldstein asked whether or not the project would have a negative impact or positive impact on the marsh. Mr. Lambert said it would have a positive impact on the marsh because the plants to be introduced would help improve the marsh as well as help the habitat in the marsh.

Mr. Stanton read into the record a section of RSA 483:B *the impervious surface area shall not exceed 30% provided the conditions of sub paragraph 2 are satisfied and a storm water management system designed to ensure that post development total runoff volume shall not exceed the predevelopment total runoff volume and approved by the department and implemented and maintained.*

Mr. Field commented that the Town and State have put in millions of dollars towards the restoration of the salt marsh by keeping fresh water away from the marsh and asked where the runoff from the proposed project would go.

Mr. Mitchell explained that the runoff will infiltrate into the ground then into the water table and if the water table is 8-feet then the water may go out toward the marsh but will not be direct infiltration.

Mr. Wilson questioned what types of soils were found when digging the test pits. Mr. Lambert said that there were layers of muck and peat and organic material mixed with cobble.

Mr. Buber asked what the actual height of the building would be. Mr. Mitchell said that the total height would be 28-feet and would meet the Little Boar's Head building height requirement of 30-feet.

Mr. Buber asked what the square footage of the living area on the first floor would be. Mr. Mitchell said it would be 1,750 square feet and less on the second floor.

Dennis Noonan spoke on behalf of the owners directly abutting Mr. Bolton located at 26 Ocean Blvd. and asked about the proposed boulders that would be placed on the property. Mr. Lambert explained their main purpose would be to enhance the growth of the plantings. He said they are made of redi rock with a textured surface that looks like rock.

Mrs. Wilson asked if the abutting property owners on the back of the lot would be able to see the retaining wall and Mr. Lambert stated that the retaining wall would not be visible to the neighbors.

Mrs. Wilson spoke on behalf of the Conservation Commission and said that they wanted proof that the septic system would never fail.

Mr. Mitchell said that it is not possible to guarantee that the septic system will never fail because septic systems have a life and they eventually fail. He further commented that the septic system installed over 30-years ago has never washed away.

The response letter to the Conservation Commission from Mr. Mitchell addressing the board's concerns has not been received by the board as of this date.

Mr. Stanton closed the public hearing at 10:22pm.

The board deliberated over each of the 5 criteria to the special exception, section 409.12 as follows:

- A. Was the lot of record, recorded at Rockingham County Registry of Deeds prior to March 8, 1988? Mr. Field opined that he was satisfied by the evidence presented that the lot in question is an approved building lot of record. The board agreed and had no objection that this criterion was met.
- B. Is the new structure not otherwise prohibited by existing ordinance? There was no objection that this criterion was met.
- C. Can the use for which the exception is sought be feasibly carried out on a portion, or portions of the lot, which are outside the Wetlands Conservation District or the buffer zone? There was no objection that this criterion was met.
- D. Due to the provisions of the Wetlands Conservation District, is it true that no reasonable and economically viable use of the lot be made without the exception? Mr. Field suggested the board come back to this question.
- E. Will the design and construction of the proposed use, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance? Mr. Field said that it could be if the board received some sort of assurances. He suggested that if the board decided to approve the variance request they should add conditions. He suggested a landscape bond be put into place. The board agreed and had no objection to this criterion. Mr. Stanton went over the criteria to the special exception under Section 409.12 and the board had no objections to each of the criteria.

**Formatted:** Numbered + Level: 1 +  
Numbering Style: A, B, C, ... + Start at: 1 +  
Alignment: Left + Aligned at: 0.25" + Indent  
at: 0.5"

The board further discussed 409.12.D and Mr. Field said that there were other economically viable uses of the land, but at the same time, under the circumstances it would be unreasonable to deny the variance. The board had no objection that this criterion was met.

The board discussed with the applicant the cost of plantings with labor included. It was determined by Mr. Lambert that the total cost would be around \$15,000.00.

**Mr. Stanton moved and Ms. Smith seconded the motion that the ZBA approve case #2008:09 request for a Special Exception subject to a 30% bond for three years based on a letter of stated expenses related to figure 3 of the proposed site improvement planting and seeding plan and subject to compliance with the Shoreland Protection Act, RSA 483: B without variances from the Commissioner.**

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

## **Minutes**

**Mr. Stanton moved and Ms. Smith seconded the motion to accept the June 24, 2008 meeting minutes.**

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

**Ms. Smith moved and Mr. Stanton seconded the motion to accept the July 22, 2008 meeting minutes.**

**The vote passed (3 in favor, 0 opposed and 2 abstentions). Ms. Peckham and Mr. Batchelder abstained because they were not present at the July 22, 2008 meeting.**

**Ms. Smith moved and Mr. Stanton seconded the motion to adjourn the meeting at 10:45pm.**

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

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

**Minutes approved September 23, 2008**

## **Attachment 1**



**Planning Board**  
P.O. Box 710  
233 Atlantic Avenue  
North Hampton, NH 03862-0710  
Tel 603.964.8087  
Fax 603.964.1514

**Phil Wilson, Chair**

---

21 July 2008

Mr. Richard H. Stanton, Chair  
Page 12 of 15

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

Zoning Board of Adjustment  
233 Atlantic Avenue – 2<sup>nd</sup> Floor  
North Hampton, New Hampshire 03862

Dear Mr. Stanton:

Thank you for your letter of 25 June 2008 in which you inform me as Chair of the Planning Board that the Zoning Board of Adjustment voted to approve a motion on 27 May 2008 about definitions of “lot of record,” “building lot of record,” and “approved building lot of record.”

If I correctly understand the meaning of the ZBA motion, the ZBA has decided to treat the three terms as “indistinguishable from each other.”

I believe that this conclusion is untenable.

For example: My wife Lisa and I own Tax Map 2, Lot 21. This 3.8 +/- acres lot has been duly recorded in the Registry of Deeds. It is, therefore, a “lot of record” according to definition 302.24 “Lot of Record” in the Zoning Ordinance. Nevertheless, this lot is most certainly not a “building lot of record” or an “approved building lot of record.” The lot has no frontage, and it is completely within Little River Salt Marsh.

Many similar lots that have been recorded in the Registry of Deeds are “lots of record,” but are not buildable for various reasons and, therefore, **are distinguishable** from “building lots of record” or “approved building lots of record.” To list only a few such lots: Map 2, Lots 66-74 and Lots 76-88; Map 15, Lot 17. Each of these lots is a “lot of record,” and each is not buildable for one or more reasons and, therefore, cannot be considered indistinguishable from lots that are “building lots of record” or “approved building lots of record.”

There are also examples of vacant lots that are “building lots of record” or “approved building lots of record:” Map 22, Lots 25, 2—15 (a few of these lots in the Abeniqui Meadows development on Buckskin Lane off Winnicut Road have already been built upon, but most remain vacant). These lots are “building lots of record” or “approved building lots of record” because they are part of a recorded subdivision plan approved by the Planning Board and on which the developer has made substantial progress within the time required to ensure vesting of his/her rights to build on those lots under the Zoning Ordinance in effect at the time of the Planning Board’s approval. Other such examples include, but are not limited to, Map 22, Lots 24, 1-5.

My point is that all lots that have been recorded in the Rockingham County Registry of Deeds are “lots of record” whether they are buildable or not. “Building lots of record” or “approved building lots of record” are those “lots of record” 1) that have been approved in a subdivision plan by the Planning Board and for which the developer’s building rights have vested or have not been allowed to lapse from lack of substantial progress on the approved subdivision plan or 2) for which the Building Inspector has issued a building permit that remains in effect.

In sum, all “building lots of record” and “approved building lots of record” are, in fact, “lots of record;” but the converse is not true – that is, it is not true that all “lots of record” are “building lots of record” or “approved building lots of record.”

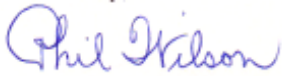
**The terms, therefore, are distinguishable and must be distinguished in deliberations and actions of the Building Inspector, ZBA and Planning Board.**

The most obvious situation in which this distinction becomes important is when an applicant proposes to build on a “lot of record” that is a non-conforming lot under the current Zoning Ordinance. If the lot has been rendered unbuildable by zoning provisions adopted after the lot was recorded, how does the ZBA exercise its power to deal fairly with the applicant? The RSAs prescribe five criteria for the ZBA to apply in deciding this question. It is conceivable that the ZBA may find good reasons to grant relief, and it also conceivable that the ZBA may find that the public interest in sustaining provisions of the Zoning Ordinance outweighs the individual property owner’s interest in developing the lot and therefore deny the application.

Sincerely,

Page 13 of 15

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.



Phil Wilson, Chair  
North Hampton Planning Board

Cc: Members of the North Hampton Zoning Board of Adjustment  
Members of the North Hampton Planning Board  
Members of the North Hampton Select Board

Enc.: Letter of 25 June 2008, Mr. Richard H. Stanton to Chair, North Hampton Planning Board, with Attachments

## **Attachment 2**

Hi, Rick,

I tried to reach you by phone, but was unable to leave a message because I am not on your call list on your answering system. (Although I very much liked the way your system screened unwanted marketing calls)

There was a comment at our last Conservation Commission meeting regarding potential contamination to a groundwater aquifer in the vicinity of where an applicant is seeking a frontage variance at your Aug 26 meeting. As mentioned previously, since no new structures or site disturbance construction is being proposed, it is questionable whether the case has anything to do with groundwater.

Nonetheless, upon further investigation, I learned that the groundwater aquifer the vicinity has already been reported as contaminated. While I have not personally confirmed this, more specifically, a plume of leachate from the Coakley landfill was reported to have percolated into the groundwater in the vicinity of Hobbs farm, near Evergreen. As a result, the Aquarion water well near Hobbs Farm (behind Evergreen Rd) was closed. This aquifer is off Birch Road, where a frontage variance has been applied for.

Consequently, while this e-mail is not a formal recommendation from the Conservation Commission, I felt that if the issue arises in your ZBA meeting next week, you will have the background information.

If you have any further questions, please feel free to contact me.

Thanks.

Chris

## **Attachment 3**

August 26, 2008

Rick Stanton, Chair  
Zoning Board of Adjustment

Dear Chairman Stanton and Members of the Board,

In regards to Mr. Stanley Knowles' ZBA application the Planning Board determined that it was important that we review and clear up existing confusion which stems from our March 6, 2006 meeting minutes. These meeting minutes are at odds as they relate to a variance which was depicted by quoting Mr. Knowles. These meeting minutes suggest that Mr. Stanley Knowles had a variance in relation to case #06:03 – Stanley Knowles Lot Line Adjustment Application for property at 3 Woodknoll Drive and 3 Cherry Road, Tax map & lots 008-011 and 008-008.

After a thorough investigation and research into the case, Mr. Richard Mabey and Mrs. Wendy Chase determined that their was in fact no variance which pertained to this application.

Page 14 of 15

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

The Planning Board made the following motion during our work session of August 19<sup>th</sup>, 2008, **Mr. Salomon moved and Mr. Wilson seconded the motion that the Planning Board authorize the Vice Chair to correspond with the Zoning Board and to state that the Planning Board minutes of March 6, 2006 as they relate to the existence of the variance on the Knowles' property appear to be at odds with the records as researched by the Planning and Zoning Administrator and Building Inspector. The vote was unanimous in favor of the motion 5-0.**

Respectfully submitted,

R. Shep Kroner  
Vice Chair, Planning Board