



TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT

Tuesday, October 28, 2008 at 6:30pm
Mary Herbert Conference Room

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These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a transcription. All exhibits mentioned in these minutes are a part of the Town Record.

Attendance

Members present: Richard Stanton, Chairman; Richard Batchelder, Vice Chairman; Susan Smith, Michele Peckham and Robert Field, Jr.

Alternates present: None

Members Absent: None

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

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

Ms. Chase gave the secretary report and said that the October 28, 2008 meeting agenda was posted at the Town Clerk's Office, Town Office and Library, and was not published in the newspaper because there were no new cases to notice.

Mr. Stanton swore in witnesses.

Minutes

Mr. Stanton asked that the Board address the previous month's minutes first because they contained important information on the following cases.

Mr. Field Moved Ms. Peckham seconded the Motion to approve the September 23, 2008 ~~m~~Meeting ~~m~~Minutes as amended. The vote was unanimous in favor of the Motion (5-0).

Unfinished Business

Rehearing for case #2008:03 William A. & Agnes Hawks Estate, C/O Citizens NH Investment Services, Trustee, 875 Elm Street, Manchester, NH 03101. The ~~a~~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 P. Hawks Estate. Property location: Maple Road, M/L 006-040, zoning district R-2. This case is continued from the September 23, 2008 meeting.

In attendance for this application:

Attorney Peter Saari, Casassa & Ryan

Wayne Morrill, Jones and Beach Engineering

Mr. Stanton stated for the record that the Applicant provided a copy of the Enviro-Septic rules and guidelines, dated 3/1/2004 and a copy of the NHDES septic rules and guidelines, dated 4/9/08 for the board members to review prior to this meeting. Mr. Field commented that the board was also in receipt of information on "rain gardens", so called.

Mr. Morrill explained the revisions to the most recent plan submitted, dated 10/03/2008, and explained that the plan now includes a "rain garden" and an infiltration pipe. They calculated the size of the garden using NHDES specifications. He further explained that the proposed rain garden would be able to handle the surface water on the Maple Road lot in a two-year storm event.

Mr. Morrill said that he met with abutters to the property to investigate the pipe that may be coming out of the lot and running under Atlantic Ave. He said they found a cast iron pipe located on the corner of the lot, depicted on the revised plan that runs under the Lamprey Brother's property into a 60-acre wetlands, and then crosses Atlantic Ave. The surface water that builds on the lot goes into the pipe and off the lot. Mr. Morrill further stated that the Lampreys had piping plans that showed the pipe continuing towards the Atlantic Ocean. Mr. Morrill submitted a copy of an aerial plan from Mark West showing the pipe.

Mr. Stanton questioned how much of the runoff water from all of the impervious surfaces on the lot would the rain garden handle? Mr. Morrill said that the proposed rain garden will handle the entire lot's impervious surface water runoff for a two-year storm event.

Ms. Smith asked how Mr. Morrill followed the pipe network. Mr. Morrill said that he followed it by using the Lamprey's plan that was well detailed. He said that he did not physically follow the pipe network.

Mr. Morrill further explained that the State Department of Transportation does not have a record of piping ~~and under~~ this section of Atlantic Ave., and that is why they don't maintain it. They asked Mr. Morrill to contact them if he did find anything so that they could add it to the State's records. It was noted that the Town of North Hampton does not appear to have a copy of the drainage pipe plan on record.

Mr. Field said that after reading all the information provided to him by the Applicant dealing with rain gardens he learned that they must be diligently maintained. He asked if the Applicant had prepared a Maintenance Plan for the rain garden. They had not. He also questioned how the Town would be assured that the rain garden would remain functioning properly and, if not, how the Town would enforce that it be maintained in perpetuity.

Mr. Morrill said that the maintenance of the rain garden is depicted on the plan. Attorney Saari said that he is not that experienced with the implementations of rain gardens but he has looked into how other communities deal with them and has found that they are handled with deed restrictions or easements placed on the property. He further said that some Towns craft the easements similar to utility easements.

Mr. Stanton asked Mr. Morrill to point out the section of the NHDES septic rules and regulations pertaining to rain gardens. (While Mr. Morrill looked for the section, Mr. Stanton continued with the meeting).

Mr. Stanton requested to include into the record, the Vanasse Hangen Brustlin, Inc. report addressed to Chris Ganotis, Chair of the Conservation Commission.

Mr. Stanton called for a 5 minute break to give the abutters and members of the Conservation Commission a chance to review Mark West's (Soil Scientist) report.

Mr. Morrill confirmed that the wetlands on the property are isolated wetlands created by all of the impervious surfaces that surround it.

Mr. Stanton asked Mr. Morrill whether or not the added water runoff resulting from additional impervious surfaces would affect the abutter's property? Mr. Morrill said that it would not affect the abutter's property because any excess water runoff would drain into the pipe and off the site.

Mr. Stanton reopened the Public Hearing at 7:17pm to review.

Mr. Stanton referred to a letter from the abutters M/M Buber and M/M Gosselin, and asked one of those abutters to confirm that the letter was from them and to enter the letter into evidence. Mr. Stanton explained that since the ~~Public~~ ~~H~~ Hearing was closed for this case at the last meeting any new evidence is not automatically entered into the record.

Attorney Saari stated that he received a copy of the Buber, Gosselin letter.

Mr. David Buber explained that the letter was not really testimony that needed to be added to the record in some sort of legal basis but rather a letter of their opinions that does not include scientific evidence. He thanked the ZBA for their efforts as well as the Conservation Commission's input and letter from Mr. Wilson of the Planning Board. Mr. Stanton asked what the basis was for the comment in the letter that the abutting properties values would be diminished. Mr. Buber said that the area around the Hawks lot is like a little village with common farm like homes; he opined that putting a modern, contemporary house on the Hawks lot would be out of character for that area. Mr. Buber said that he has no expertise in assessing the value. Mr. Buber said he assumed the bank owns the property and opined that it is unlikely the bank would build a house on the lot but rather to get all the approvals from the ZBA in order to market the lot as a buildable lot.

Mr. Field asked Mrs. Buber who has lived across from the Hawks lot for many years why the pine trees were sequentially planted on the lot back in the 1940's and 1950's creating a forest. Ms. Buber explained that her family moved there in 1958 and the height of the trees was no bigger than her father. Ms. Buber made the assumption that the trees were planted to help suck up the water because the land was totally wet. Mr. Field asked if it were her recollection that the area was always a wetland and the notion that the wetlands on the lot were created artificially could be questioned.

Mr. Buber said that over 50% of the area is poorly drained wetland with .9 acre of uplands. He said that six months of the year water is visible on the site. He said that willow trees were planted by Mrs. Buber's father on their property to help suck up the water. He commented that the proposed house does not include a basement due to the high water table.

Ms. Peckham asked if the proposed building would make the flooding worse for the abutters and surrounding area. Mr. Morrill said that the proposed house will sit on gravel and the runoff will go into the ground before the wetlands and any excess runoff will go into the pipe and off site. He further explained that everything will be sloped to direct runoff water into the "rain garden". The surface elevation is 24; the large wetland's elevation 23 then slopes down to 22 then to 17.

Mr. Field voiced concerns on how and who is going to be maintaining the rain garden?

Mr. Morrill said firms like West Environmental are sometimes hired by the homeowner to maintain the rain gardens.

Page 3 of 8

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Ms. Peckham asked if the landowner would be able to take over the responsibilities of the rain garden. Mr. Morrill said that the homeowner would be educated on how to maintain the rain garden so that they could take over the responsibilities.

Lee Brooks, Vice Chairman of the Conservation Commission spoke on behalf of the Commission. He said that he looked at the revised plans but other members of the Conservation Commission did not have a chance to do so. He commented that the septic system and the proposed structure are too close to the wetlands based on the setbacks established by the Town. He commented that stormwater best management practices are no substitute or replacement for zoning ordinances and that the Conservation Commission stands by that. He further commented that performance of the rain gardens is uncertain unless properly designed. The Conservation Commission feels that the proposal is still too close to the wetlands buffer zone.

Mr. Stanton asked Mr. Brooks his opinion on rain gardens, and if they prove to result in managing all surface runoff from impervious surfaces, would his recommendation to the ZBA change? Mr. Lee said that he does not know enough about rain gardens to give an opinion.

Mr. Brooks commented that the Conservation Commission is an advisory board and wetlands protection is the Commission's number one priority.

Lisa Wilson, member of the Conservation Commission questioned what the square footage of the roof line was and how much water runoff it would produce. Mr. Morrill replied that it was 1,436 square feet and the rain garden would be approximately 1,300 square feet. Ms. Wilson asked what the percentage of the slope is to the rain garden from the house. Mr. Morrill said less than ½ %. Ms. Wilson said that the research she did indicated that there needed to be a 12% slope in order for the rain garden to be effective. Mr. Field stated that according to the material presented to the board on rain gardens it states that the slope should be a minimum of a 1% slope. Mr. Stanton commented that in addition to the proposed rain garden, there will also be trees planted. Ms. Wilson questioned if a "rain garden" could be too large and Mr. Morrill said that the proposed rain garden is sufficient for this property to handle a two-year storm event.

Ms. Smith referred to a document produced by the North Hampton Conservation Commission titled A citizens guide in protecting North Hampton's wetlands and water resources. She said that the document lists "rain gardens" as a way to protect the Town's water supply. Ms. Smith commented that the concept of "rain gardens" although new the Zoning Board, has been investigated, and is encouraged, by the Conservation Commission and did not understand why it was being presented as a new concept from the Conservation Commission. Ms. Wilson said that it is incumbent upon all boards to do due diligence and not approve something on the basis of a concept that may or may not work on that particular area. She further commented that if the approval is contingent on the proposed rain garden, then more research needs to be done to make sure it works.

Mr. Stanton said Mr. West did come to the last meeting and explained in detail the soils in that area, but unfortunately there was no one from the Conservation Commission present to hear that presentation.

Ms. Smith said that she inspected the site today after the recent rainfall, and did not see any standing water. Ms. Smith said that there was a mathematical formula used in developing this particular rain garden.

Mr. Field opined that he is in favor of the "rain garden" concept; it is the maintenance issues that may be a problem. Ms. Smith suggested the Conservation Commission become involved in monitoring the "rain gardens" to insure that they are functioning properly.

Dr. Arena, 8 Dancer's Image Way, said that he has lived in the area long enough to witness all types of weather and the land in question is wet all the way through. He said that it is an inland wetland that eventually drains into the bass marsh and then into the ocean.

Peter Simmons, 29 Ocean Blvd., stated for the record that he is a member of the Conservation Commission. He suggested that the ~~b~~B~~o~~ard concentrate on the different soils on the lot because of the difference between poorly drained soils and very poorly drained soils. He said that the very poorly drained soils are the problem, and there are no very poorly drained soils on the Hawks lot.

Mr. Stanton commented that the Conservation Commission was looking at a totally different plan when forming their opinion to the Zoning Board, and most of the members have not yet seen the revised plan.

Mr. Saari commented that most of the issues have been addressed. He said that whatever conditions the ~~b~~B~~o~~ard puts on the approval the ~~a~~A~~p~~plicant can "live with".

Mr. Morrill stated for the record that sections envwq1508.08 – vegetated berms and envwq1508.06 – filtration practices of the NHDES rules and regulations are the sections dealing with rain gardens.

Bill Gosselin, 2 Goss Road asked what would happen to the septic tank if there were a loss of electricity. Mr. Morrill said that there is a pump chamber along with the septic tank and there are different floats inside the chamber alerting to malfunction, which would set off alarms alerting the homeowner.

Mr. Stanton closed the reopened Public Hearing at 8:37pm.

Mr. Stanton called for a 10 minute recess and reminded the members not to discuss the case during the break.

Mr. Stanton reconvened at 8:48pm.

Board deliberation:

The board discussed the criteria in Section 409.12:

- A. *The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds prior to March 8, 1988:* the ~~B~~B~~o~~ard agreed that this criterion is met because a deed was provided and it is an approved building lot.
- B. *The new structure or expansion is not otherwise prohibited under the ~~z~~Zoning ~~o~~Ordinance.* The ~~b~~B~~o~~ard agreed that this criterion is met because it is not otherwise prohibited.
- C. *The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot, which are outside the Wetlands Conservation District or the buffer zone.* The ~~b~~B~~o~~ard agreed that this criterion is met because there is no other place to put the house.
- D. *Due to the provisions of the Wetlands conservation District, no reasonable and economically viable use of the lot can be made without the exception.* Mr. Field said that there has not been any evidence presented of no alternative uses of the lot. Mr. Stanton said "economically viable" are the key words. Ms. Smith said that the owners have been paying taxes on a buildable lot for many years. Ms. Peckham said that the key word is "reasonable".
- E. *The design and construction of the proposed use will, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance.* Mr. Field ~~likes appreciates what~~ the ~~a~~A~~p~~plicant's ~~is doing by the~~ care and concern put forth over the months to address the Board's and the public's needs. He said his major concern is how the proposed rain garden would be maintained. Mr. Stanton said that the board has the capability to put together criteria, and to craft the language of an easement

Page 5 of 8

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regarding the maintenance of a rain garden. Mr. Field said that Town Counsel should draft the easement; not the board.

Attorney Saari said that he has information on how other towns handle rain gardens and will present it to the Board.

Mr. Morrill said that there is maintenance to be performed every couple of years on rain gardens so that they work effectively, such as replacing mulch and maintaining the plantings.

After much discussion the board decided to ask Town Counsel for advice on crafting an easement using the following guidelines:

Ongoing maintenance of the rain garden

Funding

Inspections

Transferability of the liability

Continuity of the bond or escrow account that stands behind it

Mr. Mabey said that the board can impose a condition that the "rain garden" must be installed properly, and according to the plan presented accordingly, and in working condition before he grants an Occupancy Permit. He explained that it would not be an automatic task, and that it would have to be written specifically as a Condition of Approval.

Mr. Field suggested that the case be placed first on next month's Agenda to vote on pending Town Counsel's advice.

Mr. Stanton asked the members if there were any other stumbling blocks so we don't go to Town Counsel for nothing.

Mr. Field Moved and Ms. Peckham seconded the Motion to defer action on Case 2008:03 until the next meeting, and in the interim to have Town Counsel render the board an opinion as to how the Board can insure in perpetuity that the rain garden concept will be maintained in a manner that will insure the Town is getting what it bargained for. The vote was unanimous in favor of the Motion (5-0).

Mr. Stanton asked Attorney Saari to provide any information on easements for "rain garden" maintenance to the board prior to the next month's meeting.

Mr. Stanton recessed the Meeting at 9:35pm.

Mr. Stanton reconvened the Meeting at 9:37pm.

2008:06 – William A. & Agnes P. Hawks Estate, C/O Citizens NH Investment Services, Trustee, 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 thirty (30) feet from an inland wetland on a vacant approved building lot of record. Property owner: William A. & Agnes P. Hawks Estate. Property location: Maple Road, Tax M/L 006-040, zoning district R-2. This case is continued from the September 23, 2008 meeting.

2008:07 – William A. & Agnes P. Hawks Estate, C/O Citizens NH Investment Services, Trustee, 875 Elm Street, Manchester, NH 03101. The applicant requests a variance from Article IV, Section 406 to permit the

erection of a new home with garage 24 ½ feet from Maple Road on a vacant approved building lot of record. Property owner: William A & Agnes P. Hawks Estate. Property location: Maple Road, Tax M/L 006-040, zoning district R-2. This case is continued from the September 23, 2008 ~~an~~Meeting.

Attorney Saari requested a continuance for cases 2008:06 and 2008:07 to the November meeting.

**Ms. Smith Moved and Mr. Batchelder seconded the Motion to grant the request for a continuance for cases 2008:06 and 2008:07 to the November meeting.
The vote was unanimous in favor of the Motion (5-0).**

The ~~h~~BBoard decided to change the regular November meeting date to November 19, 2008 due to the Thanksgiving holiday. Ms. Chase will book a meeting room and inform the board of the location.

New Business

Discussion on amending the ZBA Rules and Procedures, Section VII Miscellaneous – Applicant authorization/agreement to pay fees incurred by the ZBA.

The ~~h~~BBoard considered whether or not to include in the ZBA ~~a~~Application for relief an agreement letter for ~~the an~~ applicant to sign that would make the applicant responsible for any fees incurred for outside technical advice the board may seek on any given application.

Ms. Smith said that the ~~h~~BBoard needs to exhaust all other avenues before seeking outside technical support that would be charged to the applicant. Mr. Field commented that the burden is on the applicant to prove their case, and they would be responsible to produce any information the board seeks. The board decided not to pursue the matter. Mr. Field was also concerned that such a rule, if adopted as mandatory, Would unfairly shift costs to applicants who might not be able to afford the costs, and, who as a RESULT would be deprived of a right to relief

Other Business

Discussion of July's draft revision of Rules and Procedures

Mr. Stanton brought to the ~~h~~BBoard's attention a procedure he learned about at the recent ZBA conference he attended that is preformed at the beginning of each meeting regarding member disqualification. He read from the material as follows: *At this time I will recognize a representative of the applicant, any abutter or member of the public, who wishes to question whether any regular or alternate member of the board sitting tonight should be disqualified as provided in NHRSA 673:14. If so, please identify yourself for the record, state who you represent, identify the board member or alternate, and state you r position why that board member or alternate should recuse himself or herself from this application.* Mr. Field commented that the ~~h~~BBoard members owe it to the public to recuse themselves if they have the slightest bit of conflict in ~~connection~~~~contributing~~ to ~~each~~ case. The ~~B~~board decided not to adopt this procedure.

Mr. Stanton brought up the fact that the Heritage Commission is listed on the ZBA application as an abutter to all ZBA applications that must be notified by certified mail paid for by the applicant. It has come to the ~~B~~board's attention that the Heritage Commission's mailbox is overflowing with certified notification of ZBA meetings. Mr. Stanton would like to write a letter to the Heritage Commission informing them that the ~~h~~BBoard will remove them as an abutter on the application and rules of procedure. Mr. Field suggested that informed notification by hand delivery or regular mail continue to be encouraged.

Ms. Smith Moved and Mr. Batchelder seconded the Motion that the Heritage Commission be deleted from the formal notification as an abutter on the ZBA application and Rules of Procedure. The vote was unanimous in favor of the Motion (5-0).

Mr. Stanton asked that the ~~board~~ Board members look over the Rules of Procedure and if there are any concerns to email them to Mr. Stanton and cc Ms. Chase so that the Bboard may address them at the next meeting.

Ms. Smith stated for the record that she would like to ask the board members that all email refrain from any opinions a member may have on any case. She said that all conversations reflecting the case should take place at public meetings. ~~regarding any case.~~

Mr. Field agreed that the substantive elements of cases should not be discussed through emails; however, he felt that matters of general application would be, and are, are appropriate for discussion via email. An example may be the distribution of a copy of a NH Supreme Court case decision, which might have been recently decided. There are always s issues and evnts that notice of which can benefit Board members at any time.-

Mr. Stanton asked how the members felt about holding a joint meeting with the Planning Board to address any amendments to the zoning ordinance the board may want to make. Ms. Smith said that the process in amending zoning ordinances should take place in the spring. She opined that it is much too late in the year to begin the process. Mr. Field agreed. The ~~b~~BBoard decided to discuss the topic at the November meeting.

The meeting was adjourned at 10:10pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary