



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, December 9, 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; Michele Peckham and Robert Field, Jr.

Alternates present: James Kierstead

Members Absent: Susan Smith

Staff present: Wendy Chase, Recording Secretary, and Richard Mabey, Code Enforcement Officer

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

Mr. Stanton called for a Pledge of Allegiance.

Mr. Stanton introduced the members and staff.

Mr. Stanton seated Mr. Kierstead for Ms. Smith.

Ms. Chase stated for the record that the December 9, 2008 agenda was legally posted in the November 24, 2008 Hampton Union, and posted at the Library, Town Clerk's Office and Town Office.

Mr. Stanton exercised the Chair's authority to address agenda items out of order and asked that the November 19, 2008 minutes be acted upon first.

Mr. Field Moved and Ms. Peckham seconded the Motion to approve the November 19, 2008 meeting minutes as amended.

The vote was unanimous in favor of the Motion (4-0-1). Mr. Kierstead abstained.

Mr. Stanton explained that he would be swearing in Witnesses at the beginning of each case.

Old Business

Motion for rehearing – case 2008:03 requested by the Chair

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Mr. Field questioned whether it should be considered a rehearing. Mr. Stanton said due to the many omissions of specifications he felt that a rehearing was called for.

It was determined by the Board that the Board should act on the Hawks case as a correction of a decision and not a rehearing.

Mr. Field Moved and Ms. Peckham seconded the Motion that the Board act on the basis of deliberating to correct a Board inadvertent error with regard to the substance of the decision made on case 2008:03 on November 19, 2008.

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

The Board discussed the corrections to be made on the Hawks decision letter for case 2008:03.

Mr. Field Moved and Mr. Batchelder seconded the Motion that the Applicant be directed to correct the plan by removing the reference to the variance.

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

Mr. Field noted for the record that the plan that will be of record for history will be the one that shows merely that a special exception was dealt with.

Mr. Stanton Moved and Mr. Batchelder seconded the Motion that the location of the septic system shall be as shown on the site plan designed by Jones and Beach Engineering for the William Hawks Trust, Maple Road North Hampton, as modified on 10/03/08 and further modified on 12/09/08, and as accepted by the Applicant on 12/09/08.

Mr. Field suggested that the Board accept the plan to reference it in the corrections to the Decision Letter.

The Board had Attorney Saari and Wayne Morrill sign the plan with an added statement that it is the plan agreed upon by the Board and Applicant.

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

Mr. Stanton Moved and Mr. Batchelder seconded the Motion that there be a condition that the type of septic system for the dwelling shall be the three bedroom design of the type in kind of the New Hampshire improved Enviro Septic system designed by Presby Environmental, and any substitute system must meet the same design criteria and State approvals as presented by the Applicant.

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

Mr. Stanton Moved and Mr. Field seconded the Motion that the footprint of the dwelling structure and garage shall be as noted on the site plan designed by Jones and Beach Engineering for the William Hawks Trust, Maple Road, North Hampton, as modified on 10/03/08, 12/09/08, and accepted on 12/09/08.

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

Mr. Stanton Moved and Ms. Peckham seconded the Motion that the nearest point to the wetlands for any structure or portion thereof be 20.8-feet as shown on the site plan designed by Jones and Beach Engineering for the William Hawks Trust, Maple Road, North Hampton, as modified on 10/03/08, 12/09/08, and accepted on 12/09/08.
The vote was unanimous in favor of the Motion (5-0).

Mr. Stanton Moved and Ms. Peckham seconded the Motion that a correction be made to condition # 2 of the original decision letter. The reference to Env-Wq 1508.08 should read Env-Wq 1508.06, and the Board was in receipt of a letter from Jones and Beach informing the Board that it should be properly titled: Env-Wq 1508.06 Stormwater Treatment Practices Filtering Practices.
The vote was unanimous in favor of the Motion (5-0).

Mr. Stanton announced that a new decision letter will be sent out to the Applicant.

The easement was discussed. Ms. Peckham asked if the Board could technically consider this since it wasn't in existence at the time of the decision. Mr. Stanton explained that it was discussed at the time of the decision. The Board asked Mr. Field to provide language for the easement at the time of the decision.

Mr. Field made an improvement to the easement by adding RSA 673:16 to paragraph 5b of the "rain garden" easement. He explained that the RSA is a provision by which towns can hold monies for a period of time for applicants in land use matters.

The Board discussed the proposed amount of \$17,000.00 written into the easement. Mr. Stanton referred to the letter and estimate on construction of the rain garden from Mark West of West Environmental, and asked that it be entered into the record.

Mr. Kierstead commented that there should be enough money retained so that the Town is never "stuck" with maintenance or replacement fees.

Mr. Stanton, Ms. Peckham and Mr. Batchelder were agreeable with an amount of \$10, 000.00 to \$12,000.00.

Ms. Peckham asked for information on the Landscaping Company that provided the estimate to Mr. West. Mr. Morrill explained that it is a Company that Mr. West has worked with in constructing these types of gardens.

Mr. Stanton Moved and Mr. Batchelder seconded the Motion to adopt the easement as modified by Mr. Field with the initial amount of \$12,000.00 with \$2,000.00 to be retained by the Town, and the easement to be recorded, and be part of the conditions of approval for this case, and pursuant to the site plan modified on 10/03/08, 12/09/08, and accepted on 12/09/08.
The vote was unanimous in favor of the Motion (5-0).

Mr. Field thanked the Applicant and Attorney Saari for the work done on the easement for the "rain garden".

2008:12 – Peter Horne Trustee, H.T.L.A.E.H. Nominee Trust F.S. 123 Nomine Trust, PO Box 1435, North Hampton. The Applicant requests a variance from Article V, Section 501.2 to allow a subdivision and lot line relocation on two lots containing non-conforming structures which are within the 75’ wetlands setback. Property owner: Peter Horne Trustee, H.T.L.A.E.H. Nominee Trust F.S. 123 Nominee Trust. Property location: 110 & 112 Mill Road, North Hampton. M/L 006-147-002 and 006-147-003, zoning district R-2.

In attendance for this application:

Peter Horne, Owner/Applicant
Attorney Bernard Pelech, Wholey & Pelech
Steve Oles, MSC Engineering

Mr. Field recused himself, and disclosed that he is a member of the North Hampton Zoning Board of Adjustment and a member of North Hampton Forever.

Ms. Peckham disclosed that she is the Attorney for North Hampton Forever.

Mr. Stanton swore in Witnesses.

Mr. Stanton asked if anyone wished to request that any member or alternate of the Board be disqualified or if anyone had a business or personal relationship that has not already been disclosed that could affect the juror standards incapable of rendering a fair and equitable decision of this Board. Hearing none, the Board proceeded with the case.

Attorney Pelech, representing Peter Horne, explained that his client’s proposal originally went before the Planning Board in November 2008 for a request for a subdivision/lot line relocation application. The Planning Board determined that Mr. Horne would need to apply for a variance to Article V, Section 501.2 because of the structures existing on the lot were non-conforming in that they were in the 75-foot wetlands setback. He further explained that the Planning Board determined that the proposal was a change of a non-conforming use. Attorney Pelech explained why he did not agree with the Planning Board; there are approximately six structures within the 75-foot wetlands setback, and they predate the wetlands ordinance. Attorney Pelech said that nothing is proposed at this time to change any of the structures or the use of any of the structures.

Attorney Pelech addressed the five criteria of the Simplex analysis:

Granting the variance will not be contrary to the public interest because the structures have existed for a long period of time in the current proximity to the mill pond.

The mill pond surrounds the property on both sides creating a special condition in that the literal enforcement of the Zoning Ordinance would result in unnecessary hardship.

The Applicant proposes no changes to the use or location of the structures. The ongoing uses are reasonable uses.

Granting the variance would be consistent with the spirit and intent of the ordinance; the use of the property is not changing, there are no new structures being built in the wetlands buffer zone. The existing structures predate the wetlands setback ordinance.

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Attorney Pelech said that the wetlands in question do not have a use like a forested wetlands where there are specific habitat values, and the structures have existed in proximity to the wetlands for a considerable period of time, and have not caused any environmental problems.

Substantial justice will be done by granting the variance; Attorney Pelech stated that the hardship upon the owner/applicant if the variance were denied would not be outweighed by any benefit to the general public, which would result from a denial.

Attorney Pelech said that putting an imaginary line on the ground will not diminish the surrounding property values. He said that the subdivision would not affect stormwater runoff or the use of the property.

Mr. Oles explained the proposed plan to the Board. He pointed out the original lots, and the proposed lot line changes. He explained the all three lots will meet the frontage, acreage and uplands requirements. He also stated that all of the lots have approval for septic systems.

Mr. Stanton opened the public hearing at 7:30pm for all those in favor of the project.
Mr. Stanton closed the public hearing without public comment.

Mr. Stanton opened the public hearing for all those opposed to the project.

Mr. Field, 123 Mill Road, said the he lives directly across the road from the premises and was speaking on behalf of himself and his wife as joint owners.

Mr. Field said that Mr. Horne met with him a couple of years ago to explain his intentions regarding the three story garage. Mr. Horne went before the Zoning Board with a variance application to expand a preexisting heated structure by 25% in the buffer zone (Section 409.9.B.2.c). Mr. Field asked Mr. Horne to change the roof line of the garage and he did. Mr. Field said that the ZBA minutes of that meeting state that a two-story building would be erected and it was built as a three-story. He further commented that he and his wife are very happy with the dam restoration Mr. Horne did.

Mr. Mabey said that the building was reconstructed as a three story building as shown on the submitted plan.

Mr. Field opined that what is occurring is incremental creeping to overcome what is the intended zoning provision of this Town. He said that he and his wife did not object to the project that was presented to them, but the end result ~~it is~~ contrary to the application. He said that the building permit application is for a two-story building, and the minutes reflect approval for a two-story building. He said that it was his judgment that it will become a building lot as a result of a step by step transaction. ~~Mr. Field requested that the Board grant the variance to allow the subdivision but add a condition that there will never be a residence created on the lot where the three story garage sits.~~

Mr. Field stated, that once again in a neighborly accommodation, they would not object to the requested three (3) lot subdivision, provided, that the Board would impose a condition that the Lot

on which the “garage” sits could not be further developed or expanded for “residential” use in the future.

Attorney Pelech opined that Mr. Field has no objection with this application; he has objection to a prior Zoning Board decision to grant a variance to construct the existing structure. He said that his client is not asking the Board to make it a conforming structure; his client is asking the Board to grant a variance to allow him to subdivide his lot. Attorney Pelech said that his client would be allowed to build a house on the lot outside of the wetland buffer, so the stipulation Mr. Field suggested that a residence never to be built on that lot does not make sense.

Mr. Horne said that there is confusion over the three-story garage and said that it is a two-story structure over a garage. Mr. Horne stated that the plans submitted to the Zoning Board for approval to raze and reconstruct the garage are the same plans submitted with his building permit application.

Mr. Mabey said that the plans submitted are the plans Mr. Horne is building by. He said that the only changes are the roofline and window changes, but the floor layout is the same with a two-car garage on the first floor, office space on the second floor and storage on the third floor.

Mr. Field said that he still contends that what was represented is not what is on the premises now. He said that his concern that what is non-conforming becomes conforming if the subdivision is approved. He further stated that he is concerned with a conversion of the structure that is currently there. He said that if the variance is granted then it will enable the Planning Board to grant the three lot subdivision, which will accommodate the three-story garage to be converted to a house.

Mr. Field asked if the Board members went out to visit the site. Mr. Stanton and Mr. Kierstead did visit the site but did not go into any of the buildings.

Mr. Field said that by creating circumstances that will legitimately allow the structures to be removed from the non-conforming status allowing the structure that exists there to be converted to a residential dwelling ought to be prevented by the Zoning Board. He requested that the Board “deny” the application for the reason that the Applicant had failed to bear the burden of proof required for granting the relief requested.

Mr. Stanton Moved and Ms. Peckham seconded the Motion to continue case 2008:12 – Peter Horne, Trustee, to the January 27, 2009 Meeting to give the Board members a chance to do a site visit of the property.

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

Mr. Stanton questioned the in-ground pool on the site.

Mr. Mabey explained that it was brought to his attention by the Assessors that an in-ground pool was being installed on the property. Mr. Mabey investigated and found that there was an in-ground pool at one time, and the Applicant was in the process of replacing it. He said that because the in-ground pool was filled in, and abandoned for over a year, that a new building permit application would need to be applied for. He further explained that he would deny the building permit application and direct the Applicant to go before the Zoning Board to apply for a variance for relief from the wetland buffer.

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Mr. Field was reseated.

Mr. Stanton Moved and Ms. Peckham seconded the Motion that the Board thank Wendy Chase and Red Mabey for a good job they did over the past year, and wished them both a Merry Christmas.

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

Mr. Stanton requested that the Board members review the draft rules of procedure and that the topic be added to the January 27, 2009 meeting.

Mr. Field asked that it be added to the record that Mr. Stanton is brilliant operator of the computer, and that he was very impressed with his work.

Mr. Field Moved and Ms. Peckham seconded the Motion to adjourn the meeting at 8:15pm.
The vote was unanimous in favor of the Motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved January 27, 2009

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