



**TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Tuesday, August 25, 2009 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: Jennifer Lerner, Chuck Gordon, Ted Turchan, and Debbie Wood.

Members Absent: None

Staff present: Richard Mabey, Code Enforcement Officer/Building Inspector, Wendy Chase, Recording Secretary.

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

Mr. Stanton convened the Meeting at 6:33pm.

Mr. Stanton invited the Board and the Audience to rise for a Pledge of Allegiance.

Mr. Stanton introduced members of the Board and Staff.

Mr. Stanton, spoke on behalf of the Board, sending its best wishes for a speedy recovery to Alternate Board member David Buber.

Ms. Chase noted for the record that the agenda was legally posted in the August 11, 2009 edition of the Hampton Union and at the Town Clerk's Office, Library, and Town Office.

Unfinished Business

2009:03 – Vincent Peter Corbett, Jr., 134 Walnut Ave., North Hampton. The Applicant requests a variance from Article IV, Section 409.9.A.1 to establish a building lot that has less than the required 100-foot wetland buffer setback. Property owner: Vincent Peter Corbett, Jr., Property location: 134 Walnut Ave., M/L 019-003, 004, 005 & M/L 015-017, zoning district R-2. This case is continued from the June 23, 2009 Meeting.

Mr. Stanton, Mr. Batchelder, Mr. Field and Ms. Peckham recused themselves from the Corbett Case #2009:03.

Ms. Smith assumed the Chair.

49 Mr. Gordon, Mr. Turchan, Ms. Wood and Ms. Lermer were seated for the recused Primary
50 Members.

51
52 In attendance for this application:

53 There was no one in attendance for this application.

54
55 Ms. Smith explained that the Board had voted to notify the Corbett's that they would continue the
56 case to the August 25, 2009 meeting. She read the letter from Ms. Chase to Mr. Corbett into the
57 record.

58
59 *Dear Mr. Corbett, The Zoning Board of Adjustment voted at their June 23, 2009 Meeting to grant*
60 *you an extension regarding your variance request application, case #2009:03 to the August 25,*
61 *2009 Meeting. If you are unable to attend the August 25, 2009 Meeting, please inform the Board in*
62 *writing. Enclosed is a copy of the list of information the Board requested from you at the May 26,*
63 *2009 Meeting.*

64
65 Ms. Smith said that a site walk was performed on June 8, 2009 at the Corbett property. She did the
66 minutes of the site walk and asked the members that were present at the site walk to review the
67 minutes.

68
69 **Mr. Turchan Moved and Ms. Lermer seconded the Motion to approve the Corbett Site Walk**
70 **Minutes of June 8, 2009.**

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

72
73 Ms. Smith referred to the response letter from Mr. Corbett informing the Board that he would not be
74 present at the August 25, 2009 Meeting.

75
76 Ms. Smith suggested that the Board consider continuing Mr. Corbett's case to the September 22,
77 2009 Meeting.

78
79 The Board agreed that they have been more than fair in allowing Mr. Corbett continuances for his
80 case, and that they needed to take the Abutters of the property into consideration. Ms. Smith
81 reminded the Board that the original application was submitted on January 30, 2009.

82
83 Ms. Peckham spoke from the audience and said that Mr. Corbett did respond to the Board
84 requesting a continuance of his case to November 2009 because he would be out of Town for the
85 summer. Ms. Peckham spoke from the audience and suggested that if the Board did not grant Mr.
86 Corbett a continuance to the November Meeting that they give Mr. Corbett the opportunity to
87 withdraw his application.

88
89 Ms. Lermer commented that the Board has given Mr. Corbett ample time to address the list of
90 information the Board is seeking regarding his case.

91
92 Ms. Smith said that she had flown home twice at her own expense to sit on the Corbett case because
93 he had requested a full member Board to hear his case. She thought it was reasonable to continue
94 Mr. Corbett's case to the September 22, 2009 Meeting.

95

96 **Mr. Lermer Moved and Mr. Gordon seconded the Motion to continue case #2009:03 – V.**
97 **Peter Corbett to the September 22, 2009 Meeting, and affirm no further extensions of his**
98 **application will be granted, and to authorize Ms. Smith as Acting Chair to write a letter to**
99 **Mr. Corbett informing him of the continuance and to include in the letter the following: (1)**
100 **Mr. Corbett may appoint a representative in his absence. The representative must have a**
101 **notarized letter written by Mr. Corbett designating them as his representative, (2) that a**
102 **duplicate list of the items the Board wishes Mr. Corbett to address (mailed to him on May 29,**
103 **2009) be attached to the letter, and (3) to give Mr. Corbett the opportunity to withdraw his**
104 **application and reapply at a later date. This would require a re-filing of the variance**
105 **application and pay all required fees with the re-filing.**
106 **The vote was unanimous in favor of the Motion (5-0).**

107
108 Mr. Stanton was reseated and resumed the Chair.
109 Mr. Batchelder, Ms. Peckham and Mr. Field were reseated.

110
111 **2009:08 – Rana J. Clarizio, Trustee, Rana J. Clarizio Revocable Trust 2000, 7 Old Locke Road, North**
112 **Hampton.** The Applicant requests a variance to Article IV, Section 409.8.A to construct a septic system
113 within the 75-foot wetland buffer setback. Property owner: Rana J. Clarizio, Trustee, Rana J. Clarizio
114 Revocable Trust 2000. Property location: 7 Old Locke Road, M/L 005-023, zoning district R-2. This case is
115 continued from the July 28, 2009 Meeting.

116
117 In attendance for this application:
118 Sam Smith, Applicant
119 Rana Clairzio, Owner/applicant

120
121 Mr. Field recused himself because his law firm may be involved in a legal case with the Applicants.

122
123 Ms. Lermer was seated for Mr. Field.

124
125 Mr. Stanton swore in witnesses.

126
127 Mr. Stanton announced that if anybody wishes to request whether any regular alternate member of
128 the Board sitting tonight should be disqualified. If you have a business relationship, personal
129 interest that could affect the jurors standard, meaning capable of rendering a fair and impartial
130 equitable decision of this Board, and if you do, please identify yourself for the record; state who you
131 represent; identify the Board member or Alternate, and state your position on why that Board
132 member or Alternate should recuse himself or herself on that application.

133
134 Mr. Stanton, Ms. Smith and Ms. Peckham disclosed that they were patients of Dr. Clarizio. Ms.
135 Clarizio had no objections on any of them presiding over her case.

136
137 Mr. Smith presented the case and explained to the Board that they have expanded the home at 7 Old
138 Locke Road to a six-bedroom home from a three-bedroom without expanding the footprint. He said
139 that the septic design needed to be expanded to accommodate the bedroom expansion. He
140 explained that the new system was recommended by NHSC because it is a “cleaner” system with a
141 smaller footprint, and would be more environmentally friendly which is especially important
142 because of the close proximity to the wetlands.

144 Ms. Peckham questioned why the new system was not going to be located in the area of the current
145 system.
146

147 Mr. Mabey explained that the current system will be left in place while they are constructing the
148 new added bedrooms. He said that the new location of the new septic system is further away from
149 the wetlands than the current system and has better soils. Mr. Mabey explained that there is very
150 little bacteria involved in the new system.
151

152 Mr. Smith went over the criteria under the Boccia analysis:
153

154 **I. Would granting this variance not be contrary to the public interest?**
155

156 Mr. Smith explained that the engineers located the new system further from the wetlands and in an
157 area where there are better soils.
158

159 **II. Boccia Criteria**

160 **a. Would not granting this variance create an unnecessary hardship because an area variance is**
161 **needed to enable the applicant's proposed use of the property given the special conditions of the**
162 **property?**
163

164 Mr. Smith said that the property is unique because the lot is surrounded by wetlands and is a non-conforming
165 lot of record. There is no other place they could put a septic system.
166

167 **b. Would not granting this variance create an unnecessary hardship, including a financial**
168 **hardship, because the benefit sought by the applicant cannot be achieved by some other**
169 **reasonably feasible method?**
170

171 Mr. Smith said that they spent more money on the new proposed system because it is environmentally
172 friendly, and hired soil scientist to locate the best possible area on the lot to put the new system in.
173

174 **III. Would the use contemplated by petitioner as a result of obtaining this variance be consistent with**
175 **the spirit of the ordinance?**
176

177 Mr. Smith said that there are provisions in the ordinance in receiving relief from the Zoning Ordinances.
178

179 **IV. By granting this variance, would substantial justice be done?**
180

181 Mr. Smith said that he and Ms. Clarizio are married and have eight children between them and they would
182 like to be able to house their combined family under one roof.
183

184 **V. Would granting this variance result in a diminution in value of surround properties?**
185

186 Mr. Smith said that the house has been empty for some time and the renovations and new
187 environmentally friendly septic system will only improve the property.
188

189 Ms. Smith said that Mr. Michael Donahue, an abutter to the Clarizio property, came forward at the
190 June 23, 2009 Meeting and spoke in favor of Ms. Clarizio's Application.
191

192 Mr. Stanton opened the Public Hearing to anyone for or against the Application.
193

194 Mr. Smith apologized to the Board for missing the last two meetings due to family issues.

195
196 Mr. Stanton closed the Public Hearing.

197
198 The Board deliberated and went over the variance standard test under the Boccia analysis.
199 The Board, by discussing each according to the Variance Worksheet, concluded that the criteria
200 were satisfied.

201
202 **Ms. Lermer Moved and Mr. Batchelder seconded the Motion to approve the Variance to**
203 **Article IV., Section 409.8.A. on case #2009:08 – Rana J. Clarizio, Trustee, Rana J. Clarizio**
204 **Revocable Trust 2000, to construct a septic system within the 75-foot wetland buffer setback.**

205
206 **Mr. Stanton made a friendly amendment adding that the owners and subsequent owners of**
207 **the property shall comply with the manufacturer’s terms of cleaning and maintenance of the**
208 **septic system.**

209
210 **Ms. Lermer and Mr. Batchelder accepted the friendly amendment.**

211
212 **The vote was unanimous in favor of the Motion (5-0).**

213
214 **New Business**

215
216 **2009:09 – Robert & Elizabeth Field, 123 Mill Road, North Hampton.** The Applicants request
217 an appeal of a decision of an Administrative Officer, (Building Inspector), for the issuance of an
218 occupancy permit, pursuant to building permit #ASR.08.77, to Mr. Peter Horne for his three-story
219 garage located at 112 Mill Road, North Hampton, M/L 006-147-002, zoning district R-2. Property
220 location and owner: 112 Mill Road, Peter Horne, Trustee, F.S. 123 Nominee Trust.

221
222 In attendance for this application:
223 Mr. Robert Field, Applicant
224 Attorney Bernard Pelech, Law Offices of Wholey & Pelech
225 Mr. Peter Horne, Owner of the subject property

226
227 Mr. Stanton swore in witnesses.

228
229 Mr. Field recused himself.
230 Mr. Gordon was seated for Mr. Field.

231
232 Mr. Stanton announced that if anybody wishes to request whether any regular alternate member of
233 the Board sitting tonight should be disqualified. If you have a business relationship, personal
234 interest that could affect the jurors standard, meaning capable of rendering a fair and impartial
235 equitable decision of this Board, and if you do, please identify yourself for the record; state who you
236 represent; identify the Board member or Alternate, and state your position on why that Board
237 member or Alternate should recuse himself or herself on that application.

238
239 Mr. Field introduced himself.

241 Mr. Field referred to Section 4, Page 3 of his submitted application of June 26, 2009. He requested
242 that the Members identified in that section recuse themselves from his case.

243
244 Mr. Stanton asked that Mr. Field articulate by each individual person, to provide the justification for
245 the basis of requesting the recusals so that the Board could handle each request individually for the
246 record and for the Town audience.

247
248 Mr. Field read from his application:

249
250 (A) The following Members/Alternates participated in a Public Meeting of the Board on or about March 24, 2009 at
251 which Item II(a) above, was denied, and at which certain analyses took place which indicate a persistent, non-waivable
252 present conflict of interest, pre-disposition, bias and/or prejudice towards the Appellants, and demonstrates an incurable
253 incapacity to sit objectively on the deliberation of the facts of the instant matter.

- (1) Chairman, Richard H. Stanton;
- (2) Vice Chairman, Richard Batchelder;
- (3) Member Susan Smith; and,
- (4) Alternate Jennifer Lermer.

It is requested that each recuse himself/herself.

(B) The following Members/Alternates of the Zoning Board participated in a Public Hearing of the Board on or about July 24, 2007, at which the “limited” Variance permitting construction of the Structure in question was granted; and, accordingly, such persons are tainted with pre-disposition, bias and/or prejudice towards the Appellants and/or the subject matter, and are disabled from objectively considering the instant case.

- (1) Vice Chairman, Richard Batchelder;
- (2) Member, Susan Smith; and,
- (3) Alternate, Jennifer Lermer.

(C) The following Alternate of the Zoning Board was recommended by a majority of the Zoning Board and, appointed by the Select Board, to serve in her position under circumstances whereby the Appellant formally criticized, disputed and voted against her, and the process and judgments used for recommending appointment, and, who, therefore, may reasonably be anticipated to hold a bias; prejudice and hostility towards Appellants.

- (1) Alternate, Deborah Woods;

(D) Chair Stanton has openly criticized, “mocked”, demonstrated personal animus and antipathy; and publicly maligned and demeaned Appellant Robert Field, not taking seriously his contributions and observations intended to further the business of the Board; and, further, he misstated and misrepresented actions during the electoral process for Board elections in March 2009. Similar bias, and dismissiveness, and hostility toward Appellant Field has also been manifested by Member Smith and Alternate Lermer, most recently during a Site Walk on June 8, 2009, and at other times; and, accordingly, none are capable of acting without bias concerning any matter involving the Appellants. Accordingly, the following should recuse themselves.

- (1) Chairman, Richard H. Stanton
- (2) Member, Susan Smith; and
- (3) Alternate, Jennifer Lermer.

254
255
256
257 Mr. Stanton referred to RSA 673:14 – Disqualification of a Member, and quoted “reasons for
258 disqualifications do not include exemption from service as a juror or knowledge of the facts
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259 involved gained in the performance of the member's official duties." Mr. Stanton asked Mr. Field if
260 there had been instances outside of the performances of their official duties that there would be
261 some indication that those members could not be fair and impartial.

262
263 Mr. Field said "yes" that there are two people because of the election process, and the appointment
264 process. Mr. Field said that Mr. Stanton has made it difficult for him to sit on the Board and
265 contribute to it, and feels that Mr. Stanton is not in a position to serve as an impartial juror on his
266 case.

267
268 Mr. Stanton quoted again from RSA 673:14 under paragraph II "When uncertainty arises as to the
269 application of paragraph I to a board member in particular circumstances, the board shall, upon the
270 request of that member or another member of the board, vote on the question of whether that
271 member should be disqualified. Any such request and vote shall be made prior to or at the
272 commencement of any required public hearing. Such a vote shall be advisory and non-binding, and
273 may not be requested by persons other than board members, except as provided by local ordinance
274 or by a procedural rule adopted under RSA 676:1".

275
276 Mr. Stanton asked the Board Members to indicate whether or not he should recuse himself. He said
277 that he does not intend to violate his own Oath of Office, which is to provide a fair and impartial
278 hearing to anybody. He said that he and Mr. Field may have had disagreements but noted that they
279 have agreed on more cases since the March election than have disagreed.

280
281 Mr. Field said that Mr. Stanton had just offered to recuse himself from the Clarizio case because he
282 had dental treatment from Dr. Clarizio, he said that the potential conflict on that case is far less
283 serious than the one that exists between Mr. Stanton and Mr. and Mrs. Field and their application.

284
285 Mr. Stanton said that he offered to recuse himself from the Clarizio case because there was a
286 personal interest involved. He said reason for recusal is either for personal interest or financial
287 interest. He said that there is no personal or financial interest between himself and the Fields.

288
289 Ms. Peckham said that she meant no disrespect to anyone but has observed that there is clear
290 animosity between Mr. Stanton and Mr. Field. She said that she couldn't say that about any other
291 member of the Board. She said that she was not sure that Mr. Stanton could be unbiased.

292
293 Mr. Batchelder said that he did not think Mr. Stanton should step down; he did not see a conflict.

294
295 Mr. Gordon agreed with Mr. Batchelder.

296
297 Ms. Smith said that members can agree to disagree, and are able to put issues aside while upholding
298 the Oath that each member has taken. She did not think Mr. Stanton should step down.

299
300 Mr. Stanton said that he decided that he would not recuse himself from Mr. & Mrs. Field's case.

301
302 Mr. Stanton asked that each member that the Applicant's requested to recuse themselves, speak for
303 themselves.

304
305 Mr. Batchelder said that he felt he could be fair and impartial and did not need to recuse himself
306 from the Field's case #2009:09.

307
308 Ms. Smith referred to previous comments and did not recuse herself from the Field's case #2009:09.
309
310 Ms. Lerner said that Mr. Field challenges the Board on different issues and she said that was
311 "great" because it makes the Board members think and makes all the issues come out in the open.
312 She said that she has seen Mr. Field get upset over little issues as well as bigger issues and has
313 always assumed that it was not personal. She said that it is Mr. Field's right to request recusals, but
314 she would not recuse herself from the Field's case #2009:09.
315
316 Ms. Wood said that she was surprised that it was assumed that she would hold any animosity,
317 because she took the Oath and would be able to always be objective. She said that she would not
318 recuse herself from the Field's case #2009:09.
319
320 Mr. Field said that if it is the member's decision not to recuse themselves then he would go forward
321 with his case but reserves the right to appeal the decision, and it is quite possible an appeal will be
322 taken. He commented that he thought it was an incredible, and silly result.
323
324 Mr. Field read a quote from Winston Churchill into the record:
325 *Never give in, never, never, never, never in nothing great or small, large or petty. Never give in*
326 *except in convictions of honor and good sense. Never yield to force, never yield to the apparently*
327 *overwhelming light of the enemy.*
328
329 Mr. Field presented pictures of Mr. Peter Horne's new garage. He went over the following:
330

- July of 2007 the predeceasing Board approved the construction of a replacement structure,
331 he said the building was not to have water, not to have plumbing and to be a three car garage
332 replacement with an office and storage space.
- Mr. Field submitted 70 photographs of the site and the building. The Board did not have
333 copies of the pictures; therefore had not seen them. Mr. Stanton asked for time to review the
334 photos. Mr. Field had the pictures numbered and a list included in his application describing
335 each picture.
- Mr. Field said that the structure that was approved and the final product are very different.
- The Building Inspector is to ensure that no zoning violations have occurred prior to the
338 issuance of a certificate of occupancy. He said that additional variances were not requested
339 or granted to change what was authorized in 2007.
- He said that there is an unlawful building, unlawful certificate of occupancy to occupy for
342 multiple reasons.

343 Mr. Field said that the occupancy permit should be denied, and that a cease and desist order should
344 be ordered, and that the applicant come back before the ZBA and make the applications for the
345 necessary variances required to permit the Horne Trust to have a building that has two or three
346 bathrooms in it, and has a kitchen and other plumbing facilities that were specifically stated that
347 would not occur. Mr. Field said that NHDES might have been misled; the building that was razed
348 was described on the plan as having two bedrooms, which it never had.
349
350 Mr. Stanton questioned some material that Mr. Field was speaking of but was not included in the
351 ZBA Application.
352

353 Mr. Field said that the material was incorporated by reference and that he had a copy of the material
354 with him.

355
356 Mr. Stanton said that the Board's instructions state that the applicant has to have all of the material
357 submitted for Board review.

358
359 Mr. Stanton recessed the Meeting for a 5-minute break so that the Board could review the photos.
360 Mr. Stanton reconvened the Meeting.

361
362 Mr. Stanton said that Mr. Gordon had questions on the history on Mr. Horne's property and asked
363 Mr. Horne's representative Attorney Pelech to give a brief history to the Board.

364
365 Mr. Stanton had a few questions first. He referenced Mr. Field's letter of June 26, 2009 and asked
366 what Mr. Field meant by "limited variance".

367
368 He said that the variance was limited and specific in what it said. He said the variance granted in
369 2007 has been expanded. He said the word "limited" is to identify that there was not a variance
370 granted for what was built.

371
372 Ms. Peckham asked to review a copy of the variance request in 2007 and the 2007 ZBA decision.
373 Mr. Pelech said that it was part of his material that he submitted regarding this case. She discovered
374 it, and reviewed it.

375
376 Mr. Stanton referred to point B of Mr. Field's application and asked him what the unauthorized
377 variances to the design approval of the structure.

378
379 Mr. Field said that (1) the building is higher than what was approved; (2) there are at least two
380 bathrooms, (3) kitchen facilities, and (4) substantial laundry facilities. Mr. Field said that what is
381 there now is a significant change to that what was represented to the Board in July 2007.

382
383 Mr. Stanton referred to point C of Mr. Field's application and asked whether the inspections were
384 documented and how were they faulty. Mr. Field said that he spoke to Mr. Mabey and was
385 informed that it was not normal procedure to keep written records at that time.

386
387 Mr. Stanton referred to point D where Mr. Field said that he was intentionally misrepresented and
388 asked Mr. Field if he meant that he was lied to. Mr. Field said that Mr. Pelech said in his response
389 that nothing was intentional, and he said that his conversations with the engineers said that it was
390 intentional. He said that the engineers had to demonstrate a reason to build a septic system that
391 would have 650 gallons per day capacity, and that would match to a two two-bedroom structures, so
392 he created a plan for DES that showed that the existing and prior building each had two bedrooms
393 and that is not true.

394
395 Mr. Stanton referred to point E of Mr. Field's application and asked about the retaining wall. Mr.
396 Field said that the existing retaining wall was modified, but he can't prove it because of privacy
397 laws.

398
399 Mr. Stanton referred to point F of Mr. Field's application and asked Mr. Field to define for the
400 Board the difference between a home occupation and a home office.

401

402 Mr. Field said that the three existing family homes are going to be used as rental property and it is
403 his interpretation that it is a commercial site. He said you cannot have a home occupation if you are
404 not occupying the home.

405

406 Ms. Peckham pointed out that Mr. Horne is not living in the structure that occupies the home office.

407

408 Mr. Gordon said that because Mr. Horne is not residing in the garage, his use of the garage as a
409 home office does not constitute a home occupation.

410

411 Mr. Field said that because Mr. Horne does not reside in any of the three houses or the proposed
412 fourth house; a home office is not permitted.

413

414 Mr. Gordon said that if he owned a home and legally rented it out to someone it would not give rise
415 to a commercial activity; he asked Mr. Field if he thought that it would be illegal for Mr. Gordon to
416 rent out his property and use the accessory structure as a home office. Mr. Field said that he
417 believes that it would be illegal.

418

419 Mr. Stanton referred to point G of Mr. Field's application and asked Mr. Field if the statement was
420 correct where he said that a person must occupy a structure in order to have a home office. Mr.
421 Field agreed that that was a true statement.

422

423 Mr. Stanton questioned an RSA Mr. Field referenced as RSA 676:7 did not make sense and asked
424 him if he meant to reference RSA 676:17. Mr. Field said that it was not supposed to be RSA
425 676:17, he said he would look for the correct RSA.

426

427 Ms. Smith asked Mr. Field what other variances he thought Mr. Field should apply for. Mr. Field
428 said that he did not know, he said it was up to Mr. Horne to decide.

429

430 Mr. Field said that Mr. Horne has stated that he does not intend to use the garage as a residence at
431 this time. He said that the building looks like a house, "smells" like a house and "quacks" like a
432 house. He said that they are fully plumbed rooms that were not shown on the original plan. He said
433 that the electrical panel showed a 220 label.

434

435 Mr. Field referred to the plan submitted to NHDES that showed the building as having two
436 bedrooms. Mr. Stanton said that he had not received that information as part of Mr. Field's
437 application. Mr. Field said that DES plan was incorporated in his ZBA application by reference.
438 He said that that if the Chair wished to reject the information then so be it.

439

440 Mr. Stanton opened the Public Hearing at 8:40pm.

441

442 Mr. Stanton asked Mr. Horne or his representative Mr. Pelech to give a history on the property to
443 update some of the members.

444

445 Mr. Pelech gave the following history:

446

- Mr. Peter Horne's father purchased the property from the Osborn's in the late 1980's.
- Mr. Horne's Trust acquired the property from his father.

447

- 448 • Mr. Horne lives at the property; he rents two of the homes and lives in the third home.
449 • In 2007 Mr. Horne came before the ZBA to demolish an existing heated garage in the
450 wetlands buffer; it was non-conforming because it proceeded the wetlands buffer.
451 • He came before the Board in July 2007 to request a variance from Article V. Section 501.2
452 and 501.5 for the purpose of razing an existing structure and replacing/rebuilding a
453 structure on a non-conforming lot. By the Ordinance he was allowed to expand the
454 structure by 25%, which he did, away from the wetlands.
455 • He submitted plans to the ZBA on July 24, 2007; the Board voted unanimously to grant the
456 variance.
457 • Mr. Simmons recessed the July 24, 2007 meeting at 8:15pm to change the video tape, Mr.
458 Pelech has been trying to retrieve the tape from Laurel Pohl for over a year and she cannot
459 find the tape. Mr. Pelech said that Mr. Horne had stated at the meeting that he did not
460 show plumbing on the plans but may want plumbing in the future. He said that is why Mr.
461 Simmons made a friendly amendment to the motion to include *any plumbing within the*
462 *building will not be used without further approval from the Building Inspector for proper*
463 *permits.*

464 Ms. Peckham asked Mr. Pelech if he thought the minutes of July 24, 2007 were wrong and Mr.
465 Pelech said “Yes”. He said that there was no appeal filed for the granting of the variance. Mr.
466 Horne proceeded to act on the variance and spent over \$200,000 to build the structure. He said
467 there was no appeal for the issuance of the building permit, electrical permit or plumbing permit.
468 He said in March 2009 Mr. Field attempted to appeal the issuance of those permits and the Board
469 agreed that the appeal was not timely filed. Mr. Pelech referred to “governmental estoppels” if
470 someone builds something on reliance of permits that are validly issued, they can’t be taken away
471 from you after you’ve built it.

- 472 • Before the ZBA meeting in 2007 Mr. Horne showed Mr. Field the plans he proposed and
473 Mr. Field said he did not like the looks of the building and asked for changes, which Mr.
474 Horne agreed to do. He did increase the height from 31-feet to 33-feet; still within the 35-
475 feet height requirement.
476 • In September of 2008 Mr. Horne applied for a subdivision with the Planning Board, and it
477 was determined by the Board that Mr. Horne would need to get a variance because the
478 subdivision would be an expansion of non-conforming uses because the existing buildings
479 are within the 100-foot wetlands setback.
480 • Mr. Horne went to the ZBA and was granted the variance and Mr. Field appealed that
481 decision. Mr. Horne was also granted a variance for his in-ground pool. The ZBA denied
482 Mr. Field’s request for rehearing on March 24, 2009 Meeting.
483 • Mr. Horne is now before the Planning Board.
484 • Mr. Mabey granted the occupancy permit for the garage, and that is what Mr. Field is now
485 appealing.
486

487 Mr. Pelech explained to Mr. Gordon that the original variance request to raze and rebuild the
488 structure was because Mr. Horne needed relief because the existing structure was within the 100-
489 feet wetlands setback.
490

491 Mr. Mabey explained that the structure could be expanded by 25% under the wetlands ordinance.
492

493 Ms. Lermer said that she sat on the original case and remembers Marc Lariviere sitting on the case
494 and he said that he did not want running water in the garage because of the proximity to the Mill
495 Pond.

496
497 Mr. Pelech said that there was a sink and plumbing that went in back of the original building and
498 Mr. Horne new it was illegal and disconnected it and went out and got a septic approval.

499
500 Mr. Pelech wanted to clarify some of the comments Mr. Field made.

501
502 Mr. Pelech said that he reasons for Mr. Field's request for the members to recuse themselves is not
503 supported by Statute or Case Law.

504
505 Mr. Pelech said that there is no kitchen or substantial laundry facility in the new garage. He said
506 Mr. Horne plans on putting in a dryer for the workers to dry there wet clothes in the winter months.

507
508 Mr. Pelech said that the septic approval was amended to show that there were no bedrooms and Mr.
509 Field is aware of that amended plan.

510
511 Mr. Pelech said that there are two one half baths and no stubbing for showers.

512
513 Mr. Pelech said that it was stipulated at the Planning Board meeting that the garage will never be
514 used as a residence.

515
516 Mr. Pelech discussed "limited" variance. Mr. Pelech attached a copy of the minutes and decision
517 letter that approved the variance.

518
519 Mr. Field's alleged violation #1 – the design scope and use of the structure for which the Certificate
520 of Occupancy was issued, does not conform to the terms and conditions of this "Variance" granted
521 by the Board on or about July 24, 2007. Mr. Pelech's response – The Occupancy Permit issued by
522 the Building Inspector is in fact the same scope of use as approved by the Zoning Board when the
523 variance was granted. There is no aspect of the structure that does not conform to the terms and
524 conditions of the variance granted by the Board on July 24, 2007.

525
526 Mr. Field's alleged violation #2 - The Building Inspector "unlawfully" and absent legal or properly
527 delegated authority issued Building Permits for the modification and construction of the structure.
528 Mr. Field characterizes the renting of single family residences as a "residential compound" and
529 "business use". Mr. Pelech's response - that in conclusion with regard to violation number 2 the
530 Board should find that the attempted appeal of the issuance of Building Permits is untimely,
531 secondly, that Mr. Horne's "home/office" is not a "home occupation"; and finally that renting of
532 three single family residential units does not constitute a "business use".

533
534 Mr. Field's alleged violation #3 - The Building Inspector was or should have been aware of
535 misrepresentations made by Mr. Horne's agents to the NH DES subsurface systems that the
536 structure was to have two bathrooms and serve two bedrooms, mistakenly made by Steven Oles.
537 Mr. Pelech's response - The plan was corrected and filed with NHDES on January 24, 2008 and
538 March 2008 prior to the Building Inspector issuing any Building permits to Mr. Horne. Mr. Pelech
539 said that violation #3 should not be considered by the Board because the plan was corrected prior to
540 the issuance of a Certificate of Occupancy.

541

542 Mr. Field's alleged violation #4 – If the septic system as presently approved, is for a four-bedroom,
543 four-bathroom house rated at 650 GPD the two unlawfully constructed bathrooms, plus the
544 provision for the kitchen and laundry equipment in the Structure have no place to discharge
545 wastewater and could affect the wetlands and possibly the Little River eco system. Mr. Pelech's
546 response - The approval for construction of the septic system was amended on January 24, 2009,
547 clarified as to the status of the buildings on March 19, 2008. He said that the Appellants are well
548 aware of that as they have attached the notice of septic approval as amended to their previous filings
549 with the Board.

550

551 Mr. Field's alleged violation #5 – The Building Inspector failed to maintain detailed and accurate
552 records of his inspections, and thus the Certificate of Occupancy should not have been granted. Mr.
553 Pelech's respond - If that were the case, any and all Occupancy Permits issued by the Building
554 Inspector would be subject to revocation.

555

556 Mr. Field's alleged violation #6 – The Building Inspector acted passively to permit the holder to
557 unilaterally modify and alter and/or reconstruct and relocate the retaining wall within the wetlands
558 buffer. Mr. Pelech's response – the retaining wall is irrelevant as to the issuance of the Occupancy
559 Permit for the three-car garage; it existed prior to the construction of the three-car garage.

560

561 Mr. Field's alleged violation #7 – The Building Inspector represents the public and due to the
562 inability of an aggrieved party to “discover” misconduct, the Building Inspector must act on the
563 public's behalf and not favor the Holder, especially under circumstances where complaints of
564 misconduct have been made to the Building Inspector. Mr. Pelech's response – Violation #7 is
565 simply the Appellant's opinion that because the Building Inspector issued Building Permits and
566 Occupancy Permits to Mr. Horne, he failed to “discover” Mr. Horne's misconduct. It is difficult to
567 discover misconduct when no such misconduct occurred.

568

569 Mr. Field's alleged violation #8 – When issuing the Certificate of Occupancy the Building Inspector
570 is in effect, “judging his own conduct”. The Zoning Board may not, legally permit the Building
571 Inspector to exercise improper assumed powers, and thereby abdicate its statutory responsibility.
572 Mr. Pelech's response – It is clearly not within the power of the Zoning Board to issue Occupancy
573 Permits. Thus, the allegation that Mr. Mabey somehow improperly assumed powers of the ZBA in
574 issuing the Certificate of Occupancy must fail.

575

576 Mr. Batchelder asked Mr. Horne if there was plumbing hookups for a shower. Mr. Horne said that
577 the plumbing exists, but there are no plans or intentions of putting a shower in. He said that he
578 would stipulate that he will not put a shower in the subject building.

579

580 Mr. Pelech reminded the Board of their condition for the prior variance that all accessory structures
581 on both lots remain accessory structures.

582

583 Mr. Mabey said that many garages in Town have bathrooms. He said it is allowed as long as there
584 is an adequate septic system. Mr. Mabey also explained that the 25% increase to the new building
585 is on the footprint

586

587 Mr. Field said that all class III roads are classified as “scenic roads”. He said that Mr. Pelech said
588 that Mill Road was not a “scenic road”.

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Mr. Field asked the Chair to ask Mr. Horne if he has maintained a residence in Londonderry, NH since 2007.

Mr. Stanton asked him, and he said that he has a Trust with a Londonderry address, but he lives at Mill Road and has since 2006.

Mr. Field said he had information indicating that Mr. Horne has lived in Londonderry, NH. He said that he does not believe that Mr. Horne is a full time resident of North Hampton.

Mr. Field said that when Mr. Horne presented the original plan to himself and Mrs. Field, they did indeed suggest that Mr. Horne make some changes, such as the roof line, which he agreed to do, but the Field's relied on the fact that those were the plans that would be filed and presented. He said that the plans submitted to the ZBA in 2007 did not show plumbing. The plumbing issue is a large part of this dispute. He relied on the plans and did not attend the July 24, 2007 meeting.

Ms. Field said that the NH DES person that he spoke to made the following statement: if the plans had been shown the way they were shown after the third or fourth amendment then the decision on this case might have been different.

Mr. Pelech asked that Mr. Field divulge the name of the person he spoke with at NH DES.

Ms. Smith asked that Mr. Field get a written statement from the person at DES so that it could be incorporated into the record.

Mr. Field said that he would look in his records and see if he can find the name of the person he spoke with at NH DES for the Board. He said he does not know how the decision would have changed but they would have approached the analysis in a different way.

Mr. Field said that once a Building Permit is issued there is no way or matter for an interested abutter or party to be notified so that they can watch the building and progress and whether or not it is in conformance with what is on the plans as to which the building permit was issued. He said that the Building Inspector is there to protect everyone. He said it is the Building Inspector's job to watch the progress, keep adequate records, and do inspections, so everyone can be assured that what is being built is what the applicant said they were going to build. He said that no one has the right to trespass onto other people's property so the first time people went through the buildings was at a site walk performed by the Planning Board. He said that he asked Mr. Horne what the water hookup and drain was for in one of the bathrooms and he thought he heard Mr. Horne say that a kitchen sink could go in it, but he can't swear to that. He said that is where the notion of the kitchen came from.

Mr. Field said that he viewed the electric panel in the garage and took pictures. He said that the panel is almost an omission of what is going to happen there. He said he saw the electrical hookup for laundry. He said that on the third floor it appears that there is capacity for hookup for a third bathroom.

Mr. Field said that he regretted using the word "limited" variance if it has mislead anyone but the point he wanted to make is that the variance was not a variance to build anything they wanted on

637 that site, it was limited to a three-story garage, office space and storage space in accordance with the
638 plans and that was not built.

639
640 Mr. Field said that Mr. Horne said that his three houses were going to be rented for purposes of
641 gaining money to pay for the dam restoration that cost Mr. Horne \$200,000. Mr. Field commented
642 that Mr. Horne did a great job on the restoration of the dam.

643
644 Mr. Field commented on the home occupation/home office issue. He said that he doesn't believe
645 that a person can live off site and use an office on property they own but do not live in.

646
647 Mr. Field said that Mr. Mabey makes sure that the plans for the building permit is up to code and
648 that the Certificate of Occupancy should only issued if all zoning requirements are met, and in this
649 case it doesn't meet the threshold test.

650
651 Mr. Stanton called for a five minute recess.

652 Mr. Stanton reconvened the Meeting at 10:04pm.

653
654 Mr. Field quoted Zoning Ordinance V, Section 501.2 *A non-conforming use may be continued but*
655 *may not be extended, expanded, or changed unless to a conforming use, except as permitted by the*
656 *Board of Adjustment in accordance with the provisions of this Ordinance.* He said that the granted
657 variance in 2007 has been extended, expanded and changed by action of the Building Inspector as
658 he accepted the plans and moved forward. Mr. Field said that the ZBA does not have the power to
659 delegate its powers. He said any change or extension or expansion needs to go back before the
660 Board.

661
662 Mr. Field said that he and his wife as abutters appealed the Certificate of Occupancy because they
663 were rejected in appealing the Building Permit because it was an untimely filing.

664
665 Mr. Stanton asked Mr. Mabey if the structure was built by New Hampshire Building Codes. Mr.
666 Mabey answered, "Yes". Mr. Stanton asked if the plumbing was installed by a licensed plumber
667 and inspected. Mr. Mabey answered, "Yes". Mr. Stanton asked Mr. Mabey if the electrical was
668 installed by a licensed contractor and inspected. Mr. Mabey answered, "Yes". Mr. Stanton asked
669 Mr. Mabey if there was a proper permit for the septic system. Mr. Mabey answered, "Yes". Mr.
670 Mabey said the State does the septic inspections and Mr. Mabey does the bed bottom inspection.
671 Mr. Stanton asked whether or not all of the permits were paid for, and Mr. Mabey said "yes". Mr.
672 Stanton asked Mr. Mabey if there were any complaints of misconduct made on any of the permits to
673 him prior to this application for an Appeal to an Administrative Decision. Mr. Mabey said that
674 there has been no one questioning the permits other than Mr. Field.

675
676 Mr. Mabey said that the elevation was determined by an engineer to be 33 ½ feet high. He said that
677 the height restriction is 35-feet. Mr. Mabey said it is not uncommon for accessory structures to
678 have electricity and plumbing as long as there was an adequate septic system for the plumbing.

679
680 Mr. Batchelder asked how long the houses on the property had been rented and Mr. Horne said they
681 were rented since the late 1980's.

682
683 Mr. Field said that there are successions of plans above and beyond what the Zoning Board
684 approved.

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Ms. Peckham asked if the plan presented was the one submitted to the ZBA when the variance was granted. Both Mr. Pelech and Mr. Field agreed that it was.

Mr. Stanton said that all of the homes are currently on separate lots.

Ms. Smith asked Mr. Horne if he planned on renting the primary house. Mr. Horne said that he lives there and does not intend on renting it. He said that the new proposed house regarding the subdivision before the Planning Board will be rented.

Mr. Horne stated again that the three-car garage will never be used as a residence.

Mr. Mabey explained that he does not keep an inspection record of each property. He says that he does a weekly report to the Town Administrator and now has a computer program that will be used to keep records on building permits.

Ms. Smith questioned the retaining wall. Mr. Field said that retaining walls that are located in the wetlands are not to be expanded upon without NH DES permits. He said Mr. Horne's retaining wall was modified without permits.

Mr. Field referred to the 2006 residential code and asked Mr. Mabey if he was sure that he did not have to keep a monitoring record of projects. Mr. Mabey said that when the State adopted that code they did not adopt the administrative portion of the code.

Mr. Mabey said the administrative part is in the code but the State did not adopt that portion. He will provide a copy of the RSA to Mr. Field.

Mr. Stanton said the first issue is whether or not a plumbing permit falls under Section 501.2, and the second issue is the home occupation/home office. He said that there is no real answer to who's checking the checker where there are no documented complaints on the performance of the Building Inspector.

Ms. Peckham said that he plumbing permit changes the variance issued.

Mr. Batchelder said that he sat on the case and his recollection was that Mr. Horne intended on putting in plumbing in the future.

Mr. Gordon asked why Mr. Simmons would have put the condition into the decision unless he wanted to make sure that if plumbing were put in that it would be installed correctly.

Ms. Smith said that she sat on the case and remembered the conversation about the sink. The Board wanted to know his intentions on what he was doing since the sink was already present. Mr. Horne stated that he did not intend to add plumbing at that time; that is when Mr. Simmons added the "friendly amendment".

The Board agreed that the "friendly amendment" made by Mr. Simmons means that the Applicant has permission for plumbing as long as it is done in accordance of the code.

733 Mr. Gordon said that he does not see where it would have been improper for Mr. Mabey to issue a
734 Plumbing Permit for the three-car garage.

735
736 Mr. Gordon said he is sensitive to the point that Mr. Field has made from the beginning. He said
737 that “as-built” is not “as presented”. He said that he can understand Mr. Field having a problem
738 with it because the final project was not what was presented to him by Mr. Horne on the original
739 plan. He said that the building is an additional three feet higher but, does not understand how that
740 would have an adverse impact. The additional footage was still within the 35-foot height
741 requirement, and Mr. Mabey would not need to send the Applicant back to the ZBA for a variance.

742
743 Ms. Peckham said that the Board relies on plans presented, and things that are said; the applicant
744 should stand by that.

745
746 The Board discussed Home Office and Home Occupation. It was determined that a home
747 occupation is conducting business for profit. Mr. Horne said he has income coming in from
748 investments that are his own personal accounts.

749
750 Mr. Gordon said that whether or not the home on Mill Road is his primary residence is irrelevant.
751 He said he could rent out his home and still use the second floor of the accessory structure as a
752 home office. He said the whole idea of a home occupation is to ensure that people do not have in a
753 residential zone the impact of a commercial business.

754
755 The Board voted on each of the alleged violations:

756
757 1. Mr. Stanton Moved and Mr. Batchelder seconded the Motion that the alleged violation #1 is not
758 true.

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

760
761 2. Mr. Gordon Moved and Mr. Stanton seconded the Motion that Building Permits as issued with
762 respect to the structure did not materially change the structure as permitted by the variance
763 granted.

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

765
766 2. Ms. Smith Moved and Mr. Batchelder seconded the Motion that it has not been demonstrated
767 That in fact a home occupation is occurring on the premises and, therefore a special exception is
768 not required.

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

770
771 3. Mr. Stanton Moved and Mr. Gordon seconded the Motion that the alleged violation #3 be
772 declared as unsubstantiated.

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

774
775 4. Mr. Stanton Moved and Ms. Smith seconded the Motion that alleged violation #4 has not been
776 substantiated.

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

778
779 5. Mr. Gordon Moved and Ms. Smith seconded the Motion on alleged violation #5 that the Board
780 has seen no evidence that the procedures taken by the Building Inspector in considering and

781 granting the Building Permit Applications have resulted in an improper granting of the Building
782 Permits.
783 The vote was unanimous in favor of the Motion (5-0).

784
785 6. Mr. Stanton Moved and Mr. Batchelder seconded the Motion on alleged violation #6 that there is
786 insufficient information that the retaining wall has any impact on the Certificate of Occupancy.
787 The vote was unanimous in favor of the Motion (5-0).

788
789 7. Mr. Stanton Moved and Mr. Gordon seconded the Motion that the alleged violation #7 is an
790 issue and not a violation.
791 The vote was unanimous in favor of the Motion (5-0).

792
793 8. Mr. Stanton Moved and Ms. Smith seconded the Motion that violation #8 is refuted because the
794 Building Inspector acted properly in accordance with the relief granted by the 2007 variance
795 decision.
796 The vote was unanimous in favor of the Motion (5-0).

797
798 Mr. Field asked if the Board Members were familiar with the Statutory Requirement that the appeal
799 for this would go directly to Superior Court. They said that they were familiar.

800
801 Mr. Field was reseated.

802
803 Mr. Stanton stated that it was brought to his attention that Mr. Forrest Griffin, who served as Chair
804 to the Planning Board for many years and also served on the Zoning Board, has recently passed
805 away. On behalf of the Board Mr. Stanton said that their thoughts and prayers are with his family
806 and to thank him for his service to the Town.

807
808 Mr. Batchelder Moved and Ms. Smith seconded the Motion to table the Meeting Minutes of July 28,
809 2009 until the September 22, 2009 Meeting.
810 The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. Field abstained.

811
812 Mr. Stanton Moved and Mr. Batchelder seconded the Motion to table the Rules or Procedure's
813 proposed changes to the September 22, 2009 Meeting.
814 The vote was unanimous in favor of the Motion (5-0).

815
816 Mr. Field said that the process for Building Code appeals may be worth addressing when the Board
817 discusses proposed changes to the Rules of Procedure.

818
819 Mr. Field Moved and Ms. Smith seconded the Motion to adjourn at 11:35pm.
820 The vote was unanimous in favor of the Motion (5-0).

821
822 Respectfully submitted,

823
824 Wendy V. Chase
825 Recording Secretary

826
827 Approved September 22, 2009