



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, March 23, 2010 at 6:30pm
Town Hall**

6

7
8 **These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a**
9 **transcription. All exhibits mentioned in these minutes are a part of the Town Record.**

10
11 **Attendance**

12
13 **Members present:** Richard Stanton, Chair; Richard Batchelder, Vice Chair; Ted Turchan; Michele
14 Peckham, and Robert Field, Jr.

15
16 **Members absent:** None

17
18 **Alternates present:** Jennifer Lerner, David Buber, Debbie Wood and Chuck Gordon

19
20 **Staff present:** Richard Mabey, Code Enforcement Officer/Building Inspector, Wendy Chase,
21 Recording Secretary, and Steve Fournier, Town Administrator.

22
23 **Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report**

24
25 Mr. Stanton convened the meeting at 6:30pm.

26
27 Mr. Stanton invited the Board and the audience to rise for a Pledge of Allegiance.

28
29 Mr. Stanton introduced members of the Board and Staff present.

30
31 The Board was in receipt of a letter from Attorney Bernard Pelech requesting a continuance for case
32 #2010:01 – Francois Boueri (66 Woodland Road) to the July 27, 2010 Meeting.

33
34 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to grant Mr. Pelech's request to**
35 **continue case #2010:01 to the July 27, 2010 Meeting, subject to the Applicant re-notifying the**
36 **abutters and paying all necessary fees to re-notify.**

37
38 Mr. Field said that he visited the site on several occasions and said that there appears to be construction
39 taking place on the home at 66 Woodland Road. He suggested that the Board receive an answer from
40 the Building Inspector, after he inspects the property, before granting the continuance request.

41
42 Mr. Pelech said that he is unaware of any construction taking place at 66 Woodland Road, and
43 suggested that the case be continued to the April Meeting, and in the interim; the Building Inspector can
44 investigate and report back to the Board at the April Meeting.

45 Mr. Field said that he observed that there was a construction trailer in the driveway and siding has been
46 removed from the home, and there is Ty-Vek paper on the dwelling. He said that they may be repairing
47 the home from the last storm, but the Board should be assured about what is going on.
48

49 **Mr. Stanton revised his Motion to grant the continuance to the April 27, 2010 Meeting; Mr.**
50 **Batchelder seconded the revised Motion.**
51 **The vote was unanimous in favor of the Motion (5-0).**
52

53 The Board was in receipt of a letter from Attorney Bernard Pelech requesting a continuance for case
54 #2010:02 – Peter Horne (112 Mill Road) to the April 27, 2010 Meeting.
55

56 Mr. Field asked Mr. Pelech if he would like him to step down during the Board’s discussion of his
57 continuance request because he has recused himself from the case. He said that he would not be voting
58 on it.
59

60 Mr. Pelech did not ask Mr. Field to step down, and said that Mr. Field stated that he may not be present
61 for the April 27, 2010 Meeting and was willing to modify his request to continue the case until May.
62

63 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to grant Mr. Pelech’s request, with his**
64 **verbal modification, to continue case #2010:02 – Peter Horne, to the May 25, 2010 Meeting.**
65 **The vote passed in favor of the Motion (4 yes, 0 opposed and 1 abstentions). Mr. Field abstained**
66 **because he has recused himself from case #2010:02.**
67

68 The first item on the agenda was a request from the Town Administrator to go into Nonpublic Session.
69

70 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to go into Nonpublic Session pursuant**
71 **to RSA 91-A:3 II (a),(c),(e) – Personnel.**
72

73 Mr. Field said that under RSA 91-A:3, and its applicable sections, only allows certain matters to be
74 considered or acted upon under Nonpublic Session. Mr. Field said that, to his knowledge, the ZBA does
75 not engage a public employee.
76

77 Mr. Fournier explained that the public employee has requested a Nonpublic Session with the Board.
78

79 **A roll call was made on the motion: Mr. Batchelder, aye; Mr. Turchan, aye; Mr. Field, aye; Mr.**
80 **Stanton, aye; and Ms. Peckham, aye.**
81

82 Mr. Fournier asked that all of the Alternate Members attend the Nonpublic Session.
83

84 Mr. Field asked Mr. Fournier under what authority he had to request the Alternates to attend the
85 Nonpublic Session. He suggested the Board follow a proper procedure and vote to allow the Alternates
86 to attend.
87

88 **Mr. Field Moved and Mr. Turchan seconded the Motion to invite the ZBA Alternates to attend the**
89 **Nonpublic Session.**
90 **The vote was unanimous in favor of the Motion (5-0).**
91

92 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to come out of Nonpublic Session**
93 **pursuant to RSA 91-A:3 II (a),(c),(e) - Personnel .**

94
95 Mr. Field said that the vote to come out of Nonpublic Session should only reference 91-A:3 II (c) because
96 he did not think (a) and (e) applied to the matter that was discussed.

97
98 Ms. Peckham said that Section (e) applied, but thought it inappropriate to discuss her reasoning,
99 because it was a Nonpublic Session.

100
101 Mr. Stanton called the question.

102
103 **Roll Call: Mr. Batchelder, aye; Mr. Turchan, aye; Mr. Field, aye; Mr. Stanton, aye; and Ms. Peckham,**
104 **aye.**

105
106 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to seal the Nonpublic Session Minutes;**
107 **there were no actions taken, and the records will remain sealed.**

108 **Roll call vote: Mr. Batchelder, aye; Mr. Turchan, aye; Mr. Field, aye; Mr. Stanton, aye; and Ms.**
109 **Peckham, aye.**

110
111 Mr. Stanton explained the Board's procedures of the Meeting to those present.

112
113 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion that due to the length, and with**
114 **permission from the Board, to hear all of the cases on the agenda this evening, and then meet on**
115 **another night to do Board deliberation of each case. He suggested limiting each Applicant to 30**
116 **minutes to present, with consent from the Board for additional time if requested, and that each**
117 **Abutter be limited to 3 minutes, with consent from the Board for additional time if requested.**

118
119 Mr. Field said that he was opposed to the suggestion and said that those opposed to an application have
120 just as much right to the floor as the Applicants. He commented that some cases are complicated and
121 need in-depth analysis. He said that limiting to 3 minutes is unreasonable.

122
123 Mr. Stanton said he understood the concern, but it would give everyone a chance to speak.

124
125 Ms. Peckham agreed with Mr. Field, and said that the Applicant should not be limited time-wise in
126 presenting a case. She said that instead of limiting involved parties to a certain time, the Board should
127 instead follow their Rules of Procedure and not take up cases after 10:00pm.

128
129 The Board decided to hold a Meeting on March 30, 2010 to deliberate each case.

130
131 **Mr. Batchelder withdrew his second to the Motion; Mr. Stanton withdrew his Motion.**

132
133 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to set up a continuation of this Meeting**
134 **to Tuesday, March 30, 2010 at 6:30pm in the Mary Herbert Conference room to perform deliberations**
135 **and to be a continuation of this Meeting.**

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

137
138 Mr. Stanton read the juror caution: *Does the Applicant wish to question any Regular or Alternate*
139 *Member of the Board sitting tonight should be disqualified. If you have a business relationship, personal*

140 *interest that could affect the jurors standard, which means capable of rendering a fair and impartial*
141 *equitable decision of this Board; if you do please identify yourself for the record; state who you*
142 *represent; identify the Board Member or Alternate, and state your position on why that Board Member*
143 *or Alternate should recuse himself or herself on that application.*

144 **Unfinished Business**

145
146 **2010:04 – Sylvia Cheever, 264 Atlantic Ave., North Hampton.** The Applicant requests a variance from
147 Article V, Section 508.4 to be allowed more than four (4) chickens for family use within 200-feet of a
148 neighboring property, but not housed within 50-feet of a neighboring property. Property owner: Sylvia
149 Cheever; property location: 264 Atlantic Ave.; M/L 014-034; zoning district R-1. This case is continued
150 from the February 23, 2010 ZBA Meeting.

151
152 In attendance for this Application:
153 Sylvia Cheever, Owner/Applicant

154
155 Ms. Peckham recused herself.
156 Mr. Stanton seated Ms. Lerner for Ms. Peckham

157
158 Mr. Stanton swore in witnesses.

159
160 Ms. Cheever presented her application. She was informed by the Board that this case, #2010:04, is a
161 new case and that all information she had pertinent to the case should be included in her presentation.

162
163 Ms. Cheever explained that she is requesting a variance from Section 508.4 of the Zoning Ordinance to
164 be allowed to keep more than the limited amount of 4 chickens for family use within 200-feet of a
165 neighboring property, but not housed within 50-feet of a neighboring property. She said that she
166 received a “notice of violation” from the Code Enforcement Officer; because it was determined that she
167 had 19 chickens. She said that after receiving the notice from the Code Enforcement Officer she has
168 moved the chickens from the front of the house to the back of the house and built more coops to house
169 the chickens, so that each coop would house the required 4 chickens. She said that she has 4 out-
170 buildings on her lot that can house the chickens if the coops are not considered structures.

171
172 Ms. Cheever said that she has taken measures to house the chickens without interfering with the
173 neighbors. She said that she recently gave away her roosters to satisfy the neighbor’s complaints, and
174 that she has tried to accommodate her neighbor’s concerns while conserving her own property rights.
175 She said that her chickens provide food for her family as well as a family activity, and that the chickens
176 provide many positive aspects, such as eating ticks, and eliminating waste that cannot be composted.

177
178 Ms. Cheever read from RSA 672:1 III-b that states “agriculture activities are a beneficial and worthwhile
179 feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal
180 planning and zoning powers or by the unreasonable interpretation of such powers”. She also read from
181 RSA 672:1 III-d that states “*unreasonable interpretation* includes the failure of local land use authorities
182 to recognize that agriculture, when practiced in accordance with applicable laws and regulations, are a
183 traditional use of land throughout New Hampshire, and that a prohibition upon this use cannot
184 necessarily be inferred from the failure of an ordinance or regulation to address it”

185 She pointed out that according to the ordinance 4 animals are allowed, including horses and cows. She
186 said that there is a huge discrimination between the space required to house 4 cows and the space
187 required to house 4 chickens.

188
189 Ms. Cheever gave the definition of “chicken” and “animal” from her 1985 edition of Webster’s
190 Dictionary. “Chicken” – a common barnyard fowl”. She said she looked up fowl and bird and finally
191 came to a definition that defined it as a warm-blooded “animal”. She said that when you interpret the
192 ordinance and extrapolate out, that all chickens are animals, it follows that animals would be considered
193 chickens in the ordinance.

194
195 Ms. Cheever said that her property at 264 Atlantic Avenue is a “farm house” and she would like to use it
196 as such. She said that she has not ignored her neighbor’s concerns, and moved the chickens where they
197 can’t be seen, smelled her heard by her neighbors. Ms. Cheever said that she does not want to
198 relinquish her property rights or her ability to sustain herself on her property because of someone’s
199 opinion.

200
201 She went over the 5 criteria of the variance test:

- 202
203 **1. Would granting this variance be contrary to the public interest?**
204 Ms. Cheever referred to RSA 672.1 III-d, and said the State supports agriculture and farming. She
205 said agriculture creates a healthy, chemical free environment. The chickens have coops and runs
206 to contain them.
207
208 **2. Would granting this variance be consistent with the spirit of the ordinance?**
209 Ms. Cheever said that she will not be erecting any new buildings on the property and that such
210 tiny animals do not impose any intensive use issues or disqualifies the spirit of the ordinance, and
211 that the chickens do not impost negative effects.
212
213 **3. Would substantial justice be done by granting this variance?**
214 Ms. Cheever said that by granting the variance it would allow her to use her property as it was
215 intended to be used. She said the chickens provide her family with food, which is more vital now
216 because she is unemployed. She said that preserving the historic nature of the property is
217 honorable and still practicable.
218
219 **4. Would granting this variance result in diminished values of surrounding properties?**
220 Ms. Cheever said that her chickens are kept out back, where they are not seen, smelled or heard.
221 She said that her property is assessed more than the properties that abut her. She said that the
222 chickens do not cause a devaluation of surrounding property.
223
224 **5. Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?**
225 **a. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special**
226 **conditions of the property that distinguish it from other properties in the area: (i) No fair and**
227 **substantial relationship exists between the general public purposes of the ordinance provision**
228 **and the specific application of that provision to the property; and (ii) The proposed use is a**
229 **reasonable one.**
230 Ms. Cheever said that the property is unique because of its connection to the historic past to
231 North Hampton; it is on the list of 100 historic homes in North Hampton, unlike her abutting

232 neighbor's homes. The house is a part of North Hampton's agricultural history. Her property
233 mainly abuts conservation land.

234
235 **b. If the criteria in subparagraph (a) are not established, and unnecessary hardship will be**
236 **deemed to exist if, and only if, owing to special conditions of the property that distinguish it**
237 **from other properties in the area, the property cannot be reasonably sued in strict**
238 **conformance with the ordinance, and a variance is therefore necessary to enable a reasonable**
239 **us of it.**

240
241 Mr. Field asked Ms. Cheever to use her Dictionary and look up the word "livestock".

242
243 Ms. Cheever read from the Dictionary, "Livestock – domesticated animal as cattle and hog bred or kept
244 on a farm for use in commercial property".

245
246 Mr. Field read into the record the definition of "agriculture" from the Town Zoning Ordinance;
247 *Agriculture shall mean cultivating the soil, producing crops, and raising livestock.* He said that he is not
248 certain that "livestock" includes fowl. He said that if it is not defined under "agriculture", then the
249 whole thing does not fall under Section 508, which means that raising fowl is unregulated in the Town's
250 Ordinances. He said that in his opinion, based on the Town Ordinance, the case is not a zoning matter.

251
252 Ms. Lerner said that she agreed with Mr. Field.

253
254 Mr. Stanton said that on the site walk he noticed an area where the chickens were kept covered by a
255 blue tarp, and asked if the tarp would be removed in the summer. Ms. Cheever said that it would be
256 removed for air flow, and sunlight.

257
258 Mr. Field thought that the Board should decide whether or not the case should be before the Board
259 before analyzing the 5 criteria.

260
261 Mr. Stanton asked if Ms. Cheever would be willing to live with a condition to never own a rooster. Ms.
262 Cheever said that she would not move the chickens from their current area, and would be amendable to
263 the condition of never owning a rooster.

264
265 Ms. Lerner said that she grew up on a farm on Atlantic Avenue. She said that she respects the fact that
266 not everyone has the time to raise animals, but everyone should have the right to raise animals.

267
268 Ms. Cheever explained that roosters maintain a social order of the chickens and it is mandated by law
269 that chickens cannot be sold in groups of less than 12. She said that they are a "flock animal".

270
271 **Mr. Field Moved and Ms. Lerner seconded the Motion that based upon the definition from Ms.**
272 **Cheever's 1985 Webster's Dictionary of "livestock" and how it relates to the definition of "agriculture"**
273 **under Section 302 of the Ordinance that does not include the word "fowl"; therefore Section 508 is**
274 **inapplicable.**

275
276 Mr. Stanton said that the Board heard, as part of the presentation, that the definition of a "chicken" is
277 basically an "animal". He said that if the Board determines that chickens do not fall under the ordinance
278 then anyone would be able to have any amount of chickens on their property, right up to the property
279 line.

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280 Mr. Field said that livestock includes the word “animals” it does not include the word “chicken”. He
281 read the definition of agriculture from section 302 and had Ms. Cheever read the definition of
282 “livestock” again, and confirmed that she was under oath. Mr. Field said that the way it is written in the
283 definitions, “chickens” are not “livestock” and “livestock” includes “animals”.

284
285 Mr. Field said that if the Motion passed, it would mean that the raising of chickens is not regulated by
286 Section 508 of the Ordinances.

287
288 Mr. Turchan commented that “animal” is referred to in Section 508, and the Board should determine
289 whether or not a “chicken” is an “animal”. Mr. Stanton said that there was testimony stating that a
290 “chicken” was an “animal”.

291
292 Mr. Batchelder asked Mr. Mabey what the outcome would be if the Motion passed.

293
294 Mr. Mabey said that if the Motion passed it would mean that “chickens” won’t be applied under the
295 Agriculture Ordinance.

296
297 Mr. Field said that the Board is not here to discuss the Building Inspector’s interpretation on anything.
298 He said that, in his opinion, he concluded that case #2010:04 should not be before the Board because it
299 is not agriculture.

300
301 Mr. Turchan asked how the word “animal” gets defined in Section 508.2. Mr. Field said that Section
302 508.2 should not be addressed, because the definitional section does not allow them to get to that
303 point.

304
305 Ms. Lerner called the question.

306
307 Mr. Stanton said that he would like to hear from the abutters, and give them an opportunity to
308 comment. Mr. Field said that the question has been called, so the case was not open for debate.

309
310 **Mr. Field amended his Motion to include that case 2010:04 be dismissed, because under the**
311 **ordinance, as it is written, does not apply to fowl being raised on the property. Ms. Lerner seconded**
312 **the amended Motion.**

313 **The Motion passed, as amended, (4 in favor, 0 opposed, and 1 abstention). Mr. Stanton abstained.**

314
315 Mr. Field asked Mr. Stanton for a reason why he abstained. Mr. Stanton did not give a reason.

316
317 Mr. Stanton reseated Ms. Peckham. Ms. Lerner stepped down.

318
319 **2010:06 – Chelsi Christensen, 86A Hunt Road, Kingston, NH 03848.** The Applicant requests a special
320 exception from Article V, Section 507 – Home Occupation to use 1,200 square feet walk-out basement
321 as an in home interior design business with two fulltime employees. Property owner: Gary Goldstein,
322 P.O. Box 305, North Hampton; Property location: 10 Deer Run Road; M/L 022-022-012;
323 zoning district R-2. This case is continued from the February 23, 2010 ZBA Meeting.

324
325 In attendance for this Application:
326 Chelsi Christensen, Owner/Applicant
327 Michael Dinan, Owner

328
329 Mr. Stanton swore in witnesses, and they stated their names for the record:
330 Michael Giammarino, 7 Deer Run Road
331 Marcia and Tom Mahan, 12 Deer Run Road
332 Herbert and Judith Hawes, 9 Deer Run Road
333 Robert Durant, 26 Deer Run Road
334 Chris Ganotis, 18 Deer Run Road

335
336 Mr. Robert Durant, Co Chair of the Homeowner’s Association, explained that he was not a direct abutter
337 to the property in question. Mr. Stanton explained that an abutter can also mean someone with a
338 financial interest.

339
340 Ms. Christensen presented her case. She explained that through the course of purchasing the property
341 at 10 Deer Run Road she discovered, through her Realtor, that there were covenants on the property;
342 one being that home occupations were not allowed. She was told that the proper protocol to follow
343 was to make a plea to the person who created the covenants, because that person would have the
344 authority to make exceptions to those covenants. Ms. Christensen said that she did not discover that
345 there was a Homeowner’s Association until recently.

346
347 Ms. Christensen said that she spoke to William Woods, whom at the time was listed as the trustee and
348 enforcer of the covenants, and said he gave her the impression that her home occupation would not be
349 an issue. Ms. Christensen apologized to the Homeowner’s Association, and explained that she thought
350 she only needed approval from Mr. Woods and the Town.

351
352 Ms. Christensen described her business as being a commercial interior design business dealing with
353 builders and developers; there is no walk-in traffic. The office is utilized to design the model homes.
354 There is a separate warehouse where the furnishings are delivered to. There will be no sign advertising
355 their company, there would be UPS and FedEx deliveries on a regular basis, and the hours of operation
356 are 9:00am to 5:00pm, Monday through Friday, and she employs two people.

357
358 Ms. Christensen went through the Home Occupation criteria under Section 507:

359
360 Any home occupation otherwise allowed as either a Permitted Use or Special Exception under the terms
361 of this Ordinance shall be permitted as a special exception if it complies with the requirements of this
362 section. ***3/9/99, 3/8/2005**

363
364 **507.1 The home occupation shall be carried on by a member of the family residing in the**
365 **dwelling unit with not more than two employees who are not part of the family**
366 **residing in the dwelling. *3/08/2005**

367
368 Ms. Christensen said that she is applying for and in-home business with two full time employees.
369 She said that she plans to move the company back into a commercial office space when her
business grows, because she will need more employees and more square footage.

370
371 **507.2 The home occupation shall be carried on wholly within the principal or accessory**
structures.

372 Ms. Christensen said that the company will be self-contained within the 1,200 square foot walk-
373 out basement. There is no need for outbuildings or separate storage on the property; they have a
374 completely separate warehouse that contains everything. There will be no visiting clients on site;
375 everything will be run out of the basement, and any meetings with clients will be held off-site.

376 **507.3 Exterior displays or signs other than those permitted under Section 506, exterior storage**
377 **of materials, and exterior indication of the home occupation or variation from the**
378 **residential character of the principal structure shall not be permitted.**

379 Ms. Christensen said that there will be no need for signage. She wants to avoid any potential for
380 walk-in traffic.

381 **507.4 Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare**
382 **shall not be produced.**

383 Ms. Christensen said that the company does not produce the aforementioned disturbances. She
384 said they look through furniture catalogs and fabric books to create a design for a
385 builder/developer.

386 **507.5 Articles not produced on the premises shall not be sold on the premises. *3/12/68**

387
388 Ms. Christensen said that they would not be producing anything to sell other than a design, and
389 then it is brought to the builder/developer to present, and the model home is installed at their
390 location after being shipped to the warehouse.
391

392 **507.6 The home occupation shall result in no detriment to property values in the vicinity or**
393 **result in a change in the essential characteristics of any area or neighborhood on**
394 **account of the location or scale of buildings, other structures, parking areas, access**
395 **ways, or the storage of vehicles. *3/08/2005**

396
397 Ms. Christensen explained that she has had an in-home occupation before. She said that there
398 was zero impact on the neighborhood. She said the only noticeable things are the 2 extra cars
399 parked in the yard, and the FedEx and UPS deliveries made daily between 9:00am -5:00pm,
400 Monday through Friday.
401

402 **507.7 The home occupation shall not create a traffic safety hazard or result in a substantial**
403 **increase in the level of traffic congestion in the vicinity. *3/08/2005**

404
405 Ms. Christensen said that she does not anticipate that there will be any impact or change to the
406 current flow of the neighborhood. The driveway is large enough to accommodate the cars and
407 there will be nothing parked in the street. All of the operations of this company will be held
408 inside of the home and will not create outside noise.
409

410 Ms. Christensen submitted her written testimony as part of the official record. She also submitted
411 copies of a letter she wrote to the members of the Homeowner's Association.

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412 Mr. Field noted for the record, that under Section 6.9 of the Board's Rules of Procedure, the
413 Homeowner's Association has a direct interest in the Application; therefore the members are a
414 legitimate party to speak on this case.

415
416 Mr. Stanton opened the Meeting to anyone in favor of the Application.

417
418 Mr. Dinan spoke in favor of the application and explained that he and Ms. Christensen purchased the
419 home (10 Deer Run Road) at auction, and apologized to the Homeowner's Association for not getting a
420 chance to explain their plans to their neighbors. He said that they both look forward to being "good"
421 neighbors.

422
423 Ms. Peckham asked that the Applicant provide the Board with a history of how they purchased the
424 property.

425
426 Mr. Dinan gave a brief history of events:

- 427 • They looked at the property through a Realtor, and Ms. Christensen asked if there were any
428 covenants/restrictions on the property.
- 429 • The Realtor had a conversation with William Woods, and he told the Realtor that the covenants
430 were written in 1987, and he has made exceptions to the covenants in the past and that Ms.
431 Christensen's proposal didn't seem to be a problem. The deed states no in-home occupations,
432 but it is also written that Mr. Woods reserves the right to make exceptions to the covenants.
- 433 • Ms. Christensen put an "offer" in to purchase the property. In the meantime the property went
434 into foreclosure, and Ms. Christensen obtained the property through auction on February 3,
435 2010; William Woods and Bradley Woods had authority at that time to make exceptions to the
436 covenants.
- 437 • Ms. Christensen was advised by her attorney to pursue getting an exception to the covenants
438 from William Woods. It was her understanding that the Homeowner's Association could
439 enforce the covenants, but could not amend or make exceptions to them at the time she
440 obtained the property.
- 441 • Within the month of March William Woods, through his Power of Attorney, Bradley Woods,
442 turned over his control of the covenants to the Homeowner's Association.

443
444 Mr. Mabey spoke from the audience and told the Board that they have no authority over homeowner's
445 covenants. Mr. Turchan agreed with Mr. Mabey, that the Board does not enforce covenants; it is a
446 private matter that the Town has no authority over.

447
448 Mr. Field and Ms. Peckham agreed that the covenants issue falls under criterion 6 of the Special
449 Exception.

450
451 Mr. Durant, Co-Chair of the Homeowner's Association, gave a copy of the Homeowner's Association
452 covenants to the Board.

453
454 The Board reviewed the covenants and determined that Mr. William Woods is the Declarant of the
455 covenants. The Declarant is described in the covenants as the owner of the Real Estate or the real
456 property.

457
458 Mr. Stanton opened the meeting to all those opposed to the Application.

459

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460 Mr. Chris Ganotis explained that by buying property in this particular neighborhood the purchaser is
461 bound by the deed, which includes protective covenants. He said that the covenants were written in
462 1987 for Dr. Bradley. He said that by Court Order Mr. Woods became the Declarant, and recently
463 Attorney Ryan reaffirmed that, regardless of the ZBA decision, the covenants still must be upheld. Mr.
464 Ganotis said that the Homeowner's Association held a meeting on March 11, 2010, and 19 members
465 were present and voted unanimously to enforce the covenants. He submitted a letter to Ms.
466 Christensen from the Homeowner's Association into evidence and noted that it was signed by William
467 Woods detailing their decision from the March 11, 2010 meeting. It was later determined that the letter
468 was signed by Bradley Woods, William Woods son, for Mr. Woods as his Power of Attorney.

469
470 Mr. Field asked Mr. Ganotis if he had a copy of the Court Order where William Woods was substituted
471 for Mr. Bradley as the Declarant. Mr. Ganotis did not have a copy of the Order, but said that he would
472 get a copy.

473
474 Ms. Peckham asked if the Homeowner's Association had any procedures set up to request relief from
475 any one of the covenants. Mr. Ganotis said that each homeowner gets a copy of a document that
476 specifies what the homeowner's rights are with respect to changing the covenants.

477
478 The Homeowner's Association has its own By-laws and Articles of Agreement. Mr. Durant submitted a
479 copy of them into the record. It was determined that the Homeowner's Association did not become a
480 legal entity until March 3, 2010.

481
482 Ms. Christensen noted for the record that she was not notified of the Homeowner's Association meeting
483 in March.

484
485 Mr. Ganotis said that the reason for the protective covenants is to protect property values.

486
487 The Board determined that there was no provision in the By-laws or Articles of Agreement allowing
488 waivers to the covenants. Mr. Turchan commented that the association could vote unanimously not to
489 enforce a certain covenant if they chose to do so.

490
491 Ms. Mahan spoke and said that any changes to the house had to be approved by Mr. Woods. She said
492 that she put an addition on her home and it had to be approved by the architectural committee.

493
494 Mr. Durant explained that the meeting on March 11, 2010 was to establish the Homeowner's
495 Association so that Mr. Woods could relinquish his powers as Declarant. The Association now has the
496 powers of enforcing, as well as changing, the covenants. He said that there is no written procedure on
497 how to request a variance from the covenants, but explained that if anyone wanted to request a
498 waiver/variance they could request a meeting of the association and plead their case, and it would be by
499 majority vote to grant or not grant the request made. Mr. Durant said that the Homeowner's
500 Association is more concerned with setting a precedent.

501
502 Mr. Mahan asked the Board if they followed Roberts Rules, and they said only as a guide. Mr. Mahan
503 asked if he could question Ms. Christensen and was given authority to do so by the Chair.

504
505 Mr. Mahan began to question Ms. Christensen, and Mr. Stanton stopped him and asked him to address
506 the Board. Mr. Mahan said that he was opposed to Ms. Christensen purchasing the house next to him.

507

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508 Mr. Field said that it appears that the By-laws and Articles of Agreement are signed by William Woods,
509 and confirmed that the documents were in the process of being registered/recorded.

510

511 Ms. Peckham said that Ms. Christensen should get her issues resolved with the Homeowner's
512 Association.

513

514 Mr. Stanton suggested deferring her application for up to six months, with the option of coming back
515 before the Board sooner if prepared to do so.

516

517 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to table case #2010:06 to the**
518 **September 28, 2010 Meeting, or sooner if asked by the Applicant to be acted upon.**
519 **The vote was unanimous in favor of the Motion (5-0).**

520

521 Mr. Stanton called for a five minute recess.

522 Mr. Stanton reconvened the meeting.

523

524 **2010:05 – Brewster Investment, LLC, 16 Alexander Drive, Hampton, NH 03842.** The Applicant (1)
525 requests a variance from Article IV, Section 406 to permit the erection of a new home with an attached
526 garage 21.1 feet from Chapel Road on a vacant approved building lot of record, and (2) requests a
527 special exception for Article IV, Section 409.12 to permit the erection of the home/garage within 20 feet
528 from an inland wetland. Property owner: Eric R. Cosman, 872 Concord Ave., Belmont, MA 02178;
529 property location: 20 Chapel Road; M/L 005-032; zoning district R-2. This case is continued from the
530 February 23, 2010 ZBA Meeting.

531

532 Mr. Stanton swore in witnesses.

533

534 In attendance for this application:

535 Attorney Peter Saari, Cassasa & Ryan

536 Wayne Morrill, Jones and Beach Engineering

537 Michael Green, Brewster Investments

538 Mark West, West Environmental

539

540 Mr. Saari presented the case. He explained that the applicant is requesting relief from the wetlands
541 setbacks with a special exception, and relief from the front setbacks from a variance. Mr. Saari said that
542 they tried to design a home that would "fit in" with the neighborhood. He said that the lot is
543 surrounded by "nice" homes, and that ideally it would be best to design a small home, but it would not
544 "fit in" with the neighborhood.

545

546 Mr. Stanton suggested that prior to the Board's deliberation it receive a plan depicting where the
547 houses are shown on the surrounding lots. Mr. Morrill said that he could provide that.

548

549 Mr. Mabey made a copy of an aerial of the site for the Board.

550

551 Mr. Morrill said that he would be able to provide a plan depicting the houses on the surrounding
552 properties. He went over the plan:

553

- The lot is 2.69 acres with 13,442 square feet of upland area, and because it is less than 16,000
554 square feet they are using the 50-foot setback requirement (Section 409.9.A.2 – zoning
555 ordinances).

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- 556 • It was a buildable lot of record when the subdivision was approved in 1955, and is still a
557 buildable lot of record today.
- 558 • The leach bed area will be in the front of the lot, and they will be installing an enviro septic
559 system; if the tubes in the system fail they will be replaced in the same location. The enviro
560 system has been proven to last longer than the traditional septic system.
- 561 • Mr. Morrill dug the test pits on the lot in 1996 and found that there was a 38" seasonal high
562 water table, which would allow a septic system to be approved for this lot. They will have to re-
563 dig for a leach field bed, but the 1996 data is relied upon because the seasonal high water table
564 would not drastically change over a 10-year period, unless the lot was completely "clear cut".
- 565 • The maximum elevation of the leach field will be 104, 1-foot above the finished grade.
- 566 • There is an area of 354 square feet of area to meet the town setback of 75-feet and to also meet
567 the 10-foot setback required by the State.
- 568 • The plan shows a "rain garden" that is designed to handle a 1-inch storm event. The water
569 infiltrates through the "rain garden" before it gets to the wetlands.
- 570 • The front of the house would meet the elevation 104 and there would be a "walk out" basement
571 in the back of the house. 1-foot of the foundation will be exposed on the front of the house.
572

573 Mr. Field referred to a report from Mr. Michael Cuomo from the Rockingham Conservation District. Mr.
574 Morrill said that he was aware of the report.

575
576 Mr. Morrill did not agree with the statements made by Mr. Cuomo in his report. Mr. Cuomo stated that
577 the proposed house is too large for the site. Mr. Morrill said that the house fits in the location and the
578 "rain garden" will be able to handle all of the water run-off from the structure.

579
580 Mr. Cuomo stated in his report that the "rain garden" does not meet the design parameters required by
581 the *New Hampshire Stormwater Manual*. Mr. Morrill said that he did not agree with that statement. He
582 said that Mr. Cuomo did not have test pit data to know if there was sufficient space from the seasonal
583 high water table to the "rain garden" itself.

584
585 Mr. Green presented a plan of the proposed house he would like to build on the lot. He explained the
586 following:

- 587 • Mr. Cosman purchased the lot 5 in 1966 with the intentions of building a house on it.
- 588 • He has paid full taxes on the property, and never requested tax abatements.
- 589 • The proposed house is not too small or too big; it would "fit in" with the neighborhood, and
590 would be energy efficient.
- 591 • The proposed is a 2 story, 4 bedroom, 2 ½ bathroom house.

592
593 Mr. Saari said that the proposed area to build the house is too small to fit a house on it. He said that
594 they could not come closer to the road and maintain an effective driveway, plus keeping it in-line with
595 the surrounding houses. He explained that the proposed house is 2,100 square feet with 1,800 square
596 feet of it being of impervious surface.

597
598 Mr. Saari said that Mr. Cuomo commented in his report that nearby lots 33 and 34 are mostly wetlands
599 with limited building envelopes. Mr. Saari said that those lots have substantial houses on them; he said
600 they don't plan to do anything different from those two lots except to "downsize" the building. Mr.
601 Saari said that Mr. Cosman's lot is assessed the highest out of all the lots in the original subdivision. He

602 said that there is uniqueness to the property because it has more wetlands on it than the surrounding
603 lots.

604

605 Mr. Saari addressed the criteria of the Special Exception:

606 **A. The lot upon which an exception is sought was an official lot of record, as recorded in**
607 **the Rockingham County Registry of Deeds prior to March 8, 1988.**

608 The lot currently is, and has since its creation, been vacant and has been a lot of record since at
609 least 1955.

610 **B. The new structure or expansion is not otherwise prohibited under the zoning ordinance.**

611 The new home would be a permitted use in the R-2 District as a single-family dwelling.

612 **C. The use for which the exception is sought cannot feasibly be carried out on a portion or**
613 **portions of the lot, which are outside the Wetlands Conservation District or the buffer**
614 **zone.**

615 In order to re-locate the home outside the Wetlands Conservation District it would either have to
616 be right up against the road and almost entirely within both the front and side setback areas.

617 **D. Due to the provisions of the Wetlands Conservation District, no reasonable and**
618 **economically viable use of the lot can be made without the exception.**

619 The only area outside of the Wetlands Conservation District that is not within the front and side
620 setbacks is a triangular area of about 200 square feet.

621 **E. The design and construction of the proposed use will, to the extent practicable, be**
622 **undertaken in such a manner as to be consistent with the purposes and spirit of this**
623 **ordinance and shall not diminish the natural resource values of affected wetlands in any**
624 **appreciable way. March 10, 2009.**

625 The applicant has gone to great lengths to mitigate any harm to the Wetlands Conservation
626 District, which might otherwise result from the home, with the objective of satisfying the
627 purposes set out in section 409.1, and believes that that mitigation will preserve the natural
628 resource value of the wetlands.

629 Mr. Field voiced concerns over how much water was on the lot after visiting the site after the last rain
630 storm.

631 Mr. Green explained that he was at the property during the last storm and the water was right up to the
632 flood plain line.

633 Mr. Saari said that it's the Board's job to balance the property owner's rights against the public interests.
634 He said that the Board has the authority to create conditions of approval that would help protect the
635 wetlands. He said it is not fair to state that one house would destroy the wetlands.

636 Mr. West explained that the "rain garden" is designed to handle the entire newly created impervious
637 surface on the lot, and treat all of it before it goes into the wetlands. Mr. West suggested minimizing
638 tree cutting on the parcel and to plant shrubs in amongst the existing trees to preserve the canopy, and
639 that will help protect the resource area. He said that they did not measure the wetland boundary to

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640 the stream itself. The stream flows throughout the spring and “dries up” in the dry months. He did not
641 delineate the wetlands boundary; it was done by Jones and Beach Engineering, but he was comfortable
642 where the wetland boundary was depicted. There is very poorly drained soil as well as poorly drained
643 soil on the lot. The water flows under Chapel Road in a north/east direction.

644 Mr. West said that the “rain garden” is designed for a 1-inch storm event. He said that the building will
645 not be in the wetlands or flood plain. He mentioned that the culvert that exists now did not handle the
646 last storm event.

647 Mr. Stanton opened the meeting for all those in support of the Application.

648 Mr. Craig Shreck, 29 Chapel Road, said that he is friends with the Greens. He said that the Board set a
649 precedent when they approved the variance on Maple Road, and this has the same parameters. He said
650 that if the Application is approved he would much rather have the house situated so that it is
651 aesthetically pleasing. He said that he has been in his house for 25 years and has never had water in his
652 basement.

653 Mr. Peter Fuller addressed the Board and said that he is opposed to the Application. He said that he
654 should have legal representation on this matter. He asked the Board for more time so that he can
655 consult with his Attorney.

656 Mr. Stanton opened the meeting to those opposed to the Application.

657 Dr. Leonard Lord, District Manager, Rockingham County Conservation District; Certified Wetlands and
658 Soils Scientist, went over Mr. Cuomo’s report:

- 659 • With the increase of impervious surfaces, damage is done to the wetlands and the wetland
660 buffers.
- 661 • Dr. Lord submitted a copy of *Effects of Urbanization on Stream Quality at Selected Sites* from a
662 Study by the USGS.
- 663 • 20% of the upland would be covered by impervious surface, which will increase storm water
664 runoff.
- 665 • They did not have test pit data, but it appeared that the “rain garden” was not situated high
666 enough to function properly.
- 667 • The proposed buffer planting appears to be small; the RCCD recommends that the vegetative
668 buffer be at least 25-feet wide.
- 669 • It was their opinion that the footprint of the house is excessive, and the garage is not needed.

670
671 Dr. Lord said that the “rain garden” will not provide 100% treatment of the runoff. He said that he did
672 not look at the area or size of the “rain garden”.

673
674 Mr. Field asked if Dr. Lord had experience with “rain gardens”. Dr. Lord said that he did not have much
675 experience on “rain gardens”, but knows that they need maintenance.

676
677 Mr. Field asked Dr. Lord for his credentials. Dr. Lord provided the following:

678 **EDUCATION**

679 Ph.D. University of New Hampshire (1996), Durham, NH 03820
680 Major Specialization: Plant Ecology
681 Minor Specializations: Plant Systematics, Mechanisms of Evolution

682
683 M.S. University of New Hampshire (1994), Durham, NH 03820
684 Major Specialization: Plant Ecology

685
686 B.S. University of New Hampshire (Summa Cum Laude, 1986), Durham, NH 03820
687 Major: Soil Science

688
689 **PROFESSIONAL CERTIFICATION AND LICENSES**

- 690
- 691 • New Hampshire Certified Soil Scientist #19
 - 692 • New Hampshire Certified Wetland Scientist #14
 - 693 • New Hampshire Subsurface Wastewater Disposal System Designer #834
 - 694 • Maine Certified Soil Scientist #271
 - 695 • Maine Site Evaluator #234

696 Mr. Glenn Schwaery, 23 Chapel Road, disclosed that he moved here from Maine and was on the
697 Conservation Commission there. He said that the runoff from this property ends up passing through
698 onto many abutters' properties. He said as an abutter he may be more inclined to support the
699 application if the relief was for the front setback only. He said that there are significant wetlands on the
700 property, and that a lot of trees need to be cut in order to put the house on the lot. He said that the
701 proposed house is too large for the lot, and would not fit in with the character of the neighborhood,
702 because it will be too close to the road, and the leach field will be seen from the road because it will be
703 raised. He said that it is unfortunate that the lot has been a lot of record for so long; the owner should
704 have asked for tax abatement long ago.

705
706 Mr. Derby, Chapel Road, said that he felt that the house would be too close to the road, and would not
707 "fit in" with the neighborhood. He said that he lives across the street and feels the new home would
708 devalue his property.

709
710 Ms. Arlene Mowry (prospective buyer of 24 Chapel Road) asked the Board if they were in receipt of her
711 letter, and they confirmed that were.

712
713 Mr. Ed Stevens, 19 Chapel Road submitted photos of the lot that he had taken earlier in the day. He also
714 submitted a copy of the National Wetlands Inventory map with the town's tax map overlaid onto it.
715 He said that he is opposed to the Application because he believes it would have a negative effect on the
716 essential rural nature of the neighborhood. He supports the Conservation Commission's report that
717 recommends denying the variance.

718
719 Chuck Gordon, 10 Sea Road, said that the Application has to satisfy all of the criteria under Section
720 409.12 – Special Exception, and one of the criterions requires that the structure proposed, in all other
721 respects, satisfies the ordinance. He said that he interprets the ordinance to mean that the two
722 variance requests for front and side setbacks, if granted, would make the structure non-conforming.

723
724 Mr. Field commented that the hope of the Zoning Ordinances is to transition non-conforming lots to
725 conforming lots.

726
727 Mr. Saari said that 20% impervious surface has been stated a few times and it is not a correct number.
728 He said that the upland area is 13,443 square feet and the proposed structure is 1,800 square feet. He
729 said that they have not talked about the driveway, and assumed that the Board would want it to be

730 constructed with pervious material. He said that he heard the comments from the abutters to make the
731 house smaller and he said that they can work on that. They will also address the concerns of having the
732 house too close to the road.

733
734 Mr. Stanton closed the Public Hearing and reminded everyone that Board deliberation on all of tonight's
735 cases will be held on March 30, 2010, at 6:30pm in the Mary Herbert Conference Room. He confirmed
736 with Mr. Saari that he will be submitting a plan depicting the location of the houses on the surrounding
737 lots to the Board prior to next week's meeting.

738

739 **New Business**

740

741 **2010:07 – Michael and Kristen Sullivan, 1 Grandview Terrace, North Hampton.** The Applicants request
742 a variance from Article IV, Section 406 and 406.1 to allow the construction of an attached two-car
743 garage approximately 13-feet from Post Road and approximately 20-feet from Grandview Terrace where
744 30-feet is the setback requirement, and approximately 19-feet In the rear yard where 25-feet is the
745 setback requirement. Property owners: Michael & Kristen Sullivan; property location: 1 Grandview
746 Terrace; M/L 014-052-000; zoning district R-1.

747

748 **Mr. Stanton Moved and Mr. Field seconded the Motion to continue case #2010:07 to the April 27,**
749 **2010 Meeting due to the lateness of the hour.**

750

751 Mr. Sullivan requested that his case be continued to the March 30, 2010 Meeting. The Board agreed.

752

753 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to continue case #2010:07 to the March**
754 **30, 2010 Meeting.**

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

756

757 **At 11:35pm, a Motion was made a seconded to continue the Meeting until March 30, 2010.**

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

759

760 Respectfully submitted,

761

762 Wendy V. Chase

763 Recording Secretary

764

765 **Approved May 4, 2010**

766

767