



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, April 27, 2010 at 6:30pm
Mary Herbert conference Room**

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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; and Robert
14 Field, Jr.

15
16 **Members absent:** Michele Peckham

17
18 **Alternates present:** Debbie Wood and Jennifer Lerner

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

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

24
25 Mr. Stanton convened the meeting at 6:36pm.

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

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

30
31 Ms. Wood was seated for Ms. Peckham.

32
33 **Unfinished Business**

34
35 **2010:01 – Francois Boueri, C/O Wholey & Pelech Law Office, PO Box 395, Portsmouth, NH 03802.** The
36 Applicant requests a variance from Article IV., Section 406.1 to allow a front setback of 28-feet where
37 35-feet is required to allow a 10' x 18' addition to the front of the existing structure, and a variance from
38 Article IV., Section 409.9.1 to allow a wetlands setback of 15-feet where 50-feet is required to allow a
39 24' x 24' addition to the rear of the existing structure. Property owner: Jean Moran, 862 Jefferson Way,
40 West Chester, PA 19380; property location: 66 Woodland Rd; M/L 006-108; zoning district R-2. This case
41 is continued from the March 23, 2010 ZBA Meeting. The application was filed on December 29, 2009.

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43

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44 Present for this Application:

45 No one was present for this Application

46

47 The Board was in receipt of a letter from Attorney Pelech requesting a continuance of case #2010:01 –
48 Francois Boueri to the July 27, 2010 Meeting. Mr. Mabey, Building Inspector, was asked at the March
49 23, 2010 meeting to inspect the property to determine whether or not construction was taking place at
50 66 Woodland Road. The Board was in receipt of a report from Mr. Mabey, that there was no
51 construction taking place at that location.

52

53 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to continue case #2010:01 – Francois**
54 **Boueri to the July 27, 2010 Meeting.**

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

56

57 Ms. Wood recused herself from case 2010:04.

58 Ms. Lermer was seated for Ms. Wood.

59

60 **2010:04 – Sylvia Cheever, 264 Atlantic Ave., North Hampton.** The Applicant requests a variance from
61 Article V, Section 508.4 to be allowed more than four (4) chickens for family use within 200-feet of a
62 neighboring property, but not housed within 50-feet of a neighboring property. Property owner:
63 Sylvia Cheever; property location: 264 Atlantic Ave.; M/L 014-034; zoning district R-1. This case is
64 continued from the March 23, 2010 ZBA Meeting.

65

66 Present for this Application:

67 Sylvia Cheever, Owner/Applicant

68 Attorney Christopher Boldt, Donahue, Tucker and Ciandella

69

70 Mr. Field Moved to address portions of the minutes of March 23, 2010 and March 30, 2010 that
71 pertained to the Cheever Case #2010:04. The Motion was not seconded. The Motion failed.

72

73 Ms. Cheever explained that she had signed an agreement with her neighbors to allow her to have hens
74 and no roosters and asked the Board for guidance on whether or not she should withdraw her variance
75 application.

76

77 Mr. Stanton explained that it was Ms. Cheever's choice on whether or not to withdraw her variance
78 application; it was not for the Board to decide. He explained to her that the ordinance is written to
79 allow 4 farm animals and the agreement with her neighbors does not supersede the zoning ordinance,
80 and that if she chose to withdraw her application and kept more than 4 chickens, she would be in
81 violation of the ordinance.

82

83 Mr. Mabey explained that the Zoning Board upheld his decision on the Appeal of an Administrative
84 Officer filed by Ms. Cheever on January 26, 2010, so if she withdraws her variance application he, as
85 Code Enforcement Officer, would have to start the enforcement process if she chose to keep more than
86 the allowed 4 chickens.

87

88 Ms. Cheever decided to proceed with her variance request.

89

90 Mr. Field noted for the record that all materials presented at the March 23, 2010 Meeting are part of
91 this record. The Board agreed.

92

93 Ms. Cheever addressed some of the “prongs” of the variance test. She said that her variance request is
94 not contrary to public interest because she felt that chickens are a positive feature to a homestead. It is
95 consistent with the spirit of the ordinance because the 50-foot limitation is met; the coops are located
96 over 100-feet from each of the neighboring properties boundary lines, and because they are such tiny
97 animals she feels that the spirit of the ordinance is acknowledged. She said that as far as the
98 uniqueness....the existing outbuildings on the property are there for animal use. The property abuts
99 conservation land and is listed as one of the 100 historic homes in North Hampton. Ms. Cheever also
100 made the following comments:

- 101 • Property rights are protected under Federal and New Hampshire constitutions.
- 102 • Restricting chickens to 4 on a property would not benefit the community; it would be an
103 “unreasonable taking”.
- 104 • She views her property on its ability to sustain her family; not on the resale value.
- 105 • Chickens do not injure other property owners or adversely affect public interest.
- 106 • Municipalities only have such powers as what is delegated to them by the Legislature and can’t
107 expand on what Legislature has given them.
- 108 • The ordinance does not specifically state “existing” farm buildings; it states “erecting” farm
109 buildings.
- 110 • At the time the ordinance was drafted agriculture was a mainstay, and everybody knew the
111 meaning of the word “livestock”.
- 112 • Ms. Cheever has been paying taxes on all of the outbuildings, and the coops are attached to the
113 barn not the house.
- 114 • Egg production reduces drastically when the hens are more than one year old. She wishes to
115 maintain two dozen eggs per week.

116

117 Ms. Cheever submitted a copy of the signed agreement (that she will not have any roosters on her
118 property) between herself and her neighbors into the record.

119

120 Mr. Stanton asked Ms. Cheever how many chickens she wanted to have, because it was not indicated on
121 her variance application.

122

123 Ms. Cheever said that she would like to have 84 chickens. She said that she will never have that many at
124 one given time, but wanted enough to produce a reasonable amount of eggs. She thought that she
125 would never have more than 50 at any given time.

126

127 Mr. Stanton opened the public hearing at 7:09pm to anyone **for** the application. Mr. Stanton swore in
128 witnesses.

129

130 Patrick Fletcher, 53 Exeter Road said that he is a Farmer and supports his family from what he produces
131 on his farm. He said that it is illegal to purchase less than 12 chicks at one time. He is in support of Ms.
132 Cheever’s variance request.

133

134 John Dodge, Exeter, NH, owner of Dodges Agway said that there is a tremendous amount of poultry in
135 New Hampshire. He said that his store sells 3,000 chicks a year. He said that a unit of chickens is one
136 dozen and that people have to take into account that 25% are lost before they start to lay eggs. He also
137 commented that a normal 4-H project starts out with at least two dozen chickens, and that the figure of

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138 50 chickens is a logical amount for agriculture. He said that poultry is an asset; eggs can cost up to \$5.00
139 per dozen at a farmers market.

140 Mr. Field asked for Mr. Dodges' credentials.

141
142 Mr. Dodge studied poultry husbandry at UNH. He has a master's degree in poultry marketing and
143 agricultural economics; a doctorate in food science and agriculture from Perdue University, and minored
144 in bacteriology and food chemistry. He worked for 10 years in the commercial poultry industry, and the
145 largest number of animals he handled at one time was about 4 million. He said he grew up on a farm in
146 Brentwood and started out in 4-H.

147
148 Ms. Lermer asked Mr. Dodge whether or not you know the sex of the chicks when purchased. Mr.
149 Dodge said that generally when chicks are sold they are guaranteed to be hens, but there are some
150 strains of chickens where sexing is imperfect.

151
152 Mr. Wollmar submitted a letter to the Board on behalf of the Agriculture Commission. Ms. Cindy
153 Jenkins, Chair of that Commission read the letter into the record. The letter contains definitions (1)
154 *livestock* as defined as domestic animals raised on a farm such as cows, sheep, goats and pigs, and (2)
155 *poultry* are fowl such as chickens, geese, ducks or turkeys. The letter states that animals have hair or
156 fur, and poultry has feathers.

157
158 Ms. Jenkins said that members of the Planning Board when the ordinance was created were Kendall
159 Chevalier and Vernon Seavey who understood agriculture where chickens were common in their lives.

160
161 Maurice Vincent, 61 Exeter Road said that he did not have farm animals and is not an expert on what
162 constitutes livestock and animals. He commented that depriving Ms. Cheever from raising chickens
163 housed in different outbuildings on her property would affect all property owners on how they can use
164 their own land.

165
166 Mike Taulty, 264 Atlantic Avenue, addressed the Board and said that it was the Board who dismissed the
167 case on March 23, 2010 and then realized they made a mistake and voted that the case was not
168 dismissed. He said after the first decision to dismiss the case he went out and bought more chickens.
169 He told the Board members that their mistake made him make a mistake. He asked who was
170 responsible for the cost of that mistake.

171
172 Mr. Field explained that there is a 30-day appeal period, and anyone has the right to appeal the Board's
173 decision within 30 days of the decision. The Board cautions Applicant's to wait to act on their decision
174 until that appeal period expires. Mr. Stanton commented that the appeal period is explained in the
175 applications' directions.

176
177 Mr. Taulty asked that the Board define for him the interpretation of the definition of "livestock". He
178 commented that owning only four chickens would break the State law that states chickens cannot be
179 sold in units of less than 12.

180
181 Mr. Stanton explained to Mr. Taulty that it is the Planning Board that amends zoning ordinances and the
182 Planning Board plans to work with the Agriculture Commission over the next year to address issues and
183 concerns people have with the agriculture ordinance. He suggested that Mr. Taulty attend the Planning
184 Board meetings to voice his opinions on how to change the current ordinance.

185

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186 Don Gould, 21 Fern Road was sworn in by the Chair. He referred to the “drafters” of the ordinance and
187 said that when courts try to find out what “drafters” meant they assume that the “drafters” meant a
188 rational result in producing something that made sense and would work. Mr. Gould felt that as far as
189 agriculture is concerned 4 chickens is not rational; multiples of 12 chickens are rational. He suggested
190 that the Board take that into consideration, as well as Mr. Dodges’ comments, when making the
191 determination of what the ordinance means.

192
193 Mr. Field read the definition of “Common Usage” into the record, *Words and phrases shall be construed*
194 *according to the common and approved usage of the language; but technical words and phrases, and*
195 *such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and*
196 *understood according to such peculiar and appropriate meaning.* He commented that rationality is an
197 important part of this process.

198
199 Matthew Douglas, 55 Exeter Road, said that he is in support of the variance application. He has a farm
200 on either side of his property and welcomes the chickens from those farms because they eat ticks.

201
202 Mr. Stanton Invited those opposed to the application to comment.

203
204 Attorney Christopher Boldt, Donahue, Tucker and Ciandella, representing Phelps Fullerton and Jamie
205 Marston commented that a lot of the debate that has been going on this evening is for the ongoing work
206 of the Agriculture Commission and Planning Board to determine what changes, if any, are needed to be
207 made to the current agriculture ordinance. He said that it is the Zoning Board’s task as a quasi judicial
208 body to interpret the existing ordinance, and apply the case law and the new standard to determine if
209 those five criteria have been met. Mr. Boldt said that he is also joined by a local realtor, Kathy Young,
210 and is aware that letters from property owners in the immediate area have written letters to the Board
211 in opposition of the application, as follows: Barbara Kierstead, 260 Atlantic Ave, Dave and Chris
212 Chevelier, 263 Atlantic Ave, Tom Haggerty, 268 Atlantic Ave, Robin Reed (present), 279 Atlantic Ave.

213
214 Attorney Boldt commented on the following:

- 215
- 216 • Mr. Boldt submitted copies of plan 17112 showing how the Cheever property was created in
217 1987. The property was “carved” away from the bulk of the property resulting in the existing two
218 acre lot. Mr. Boldt pointed out that the use is an illegal use, not a non-conforming use.
 - 219 • Section 508 is intending to limit the number of farm animals to protect existing farms. It is not
220 known what the intentions were of the “drafters”, there is no proof, such as written minutes; it is
221 hearsay.
 - 222 • Definition from Black’s Law, “animal” meaning any animate being not human and “livestock” is
223 defined as domestic animals on a farm.
 - 224 • The area is residential; Mr. Boldt submitted aerial photos of the area.
 - 225 • The ZBA’s jurisdiction is limited to the five criteria; not for amending the zoning ordinance.
 - 226 • The neighbors strongly assert that granting the variance conflicts with the ordinance, and
227 disturbs their public health and welfare; disturbing their peace and quiet enjoyment of their
228 property.
 - 229 • He mentioned the stench that hens and guano produce.
 - 230 • Spirit of the ordinance prong is not met because the ordinance allows 4 chickens within 50-feet
231 as long as it is not commercial, and 4 chickens allows a family to feed itself.

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- 232 • Substantial justice is not met because the loss to the applicant must be outweighed by a benefit
233 to the general public. It is better to uphold the ordinance as written and go through the
234 legislative process and have the voters determine how to change the ordinance. The benefit to
235 the general public outweighs any detriment to the Applicant.
- 236 • The Applicant must prove that the values of surrounding properties will not be diminished. Mr.
237 Boldt said that it was his understanding that the Applicant has not addressed this criterion. He
238 said that the property was purchased with two acres and was not intended to be used as a farm,
239 and that granting the variance would cause a negative impact considering the size of the
240 property.
- 241 • Unnecessary hardship requires the Applicant to prove that there are special conditions of the
242 property that distinguish it from surrounding properties, and must also prove (1) there is no fair
243 and substantial relationship between the general public purposes of the ordinance provision and
244 the specific application of those provisions to the property, and (2) the proposed use is a
245 reasonable one. He said that there is nothing unique about the Cheever property; three of the
246 properties shown have small lots and barns also.
- 247 • Mr. Boldt explained that the parties went to court and the number of hens was not addressed
248 because of the pending variance case before this Board. He said that the only decision made was
249 to not allow Ms. Cheever to have roosters.
- 250 • Mr. Boldt asked the Chair to ask Dr. Dodge if UNH Cooperative is recognized as a reputable
251 authority in this area for chickens. Dr. Dodge affirmed that it is. Mr. Boldt submitted information
252 from the UNH website on chickens. Within the material it states that a typical hen lays 200 to
253 250 eggs a year, floor space for each is 1 ½ square feet to 2 ½ square feet per hen. He said that a
254 unit is considered to be 5 as presented within the UNH document, and that chicks older than 4
255 weeks can be sold in units less than 12. Dr. Dodge disagreed.
- 256 • Mr. Boldt said that Ms. Cheever has not met the five criteria. He said that it is the Applicant's
257 burden of proof.

258
259 Mr. Boldt reserved the right to have rebuttal. Mr. Stanton said rebuttal is for applicant only. Mr. Boldt
260 disagreed.

261
262 Ms. Lermer asked Mr. Dodge for his expert opinion on the laying ability the chickens have over time.

263
264 Dr. Dodge said that baby chicks have to be sold in units of 12. He said that his stores have been involved
265 in "poultry swaps" where people trade chickens and was recently informed by the State of NH
266 Agriculture Department that these swaps were illegal because people are not allowed to trade 1
267 chicken; they have to have 12, regardless of age.

268
269 Kathy Young said that she has been in the real estate profession for over 40 years in the seacoast area as
270 a licensed broker, and is a past president of the Seacoast Real Estate Association. She was present to
271 explain the ramifications in approving the variance request. She agrees that granting the variance would
272 diminish area property values. Ms. Young explained that real estate buyers have choices and they may
273 not pick a house that is across the street from someone raising chickens. Ms. Young said that she is not
274 a MAI (Certified Appraiser, licensed by the State). Mr. Field asked if she had the same capacities to
275 render the same analysis as a MAI would; she said that she could.

276
277 Mr. Turchan asked Mr. Boldt the adverse affects poultry would contribute to the health, safety and
278 welfare of the public.

279

280 Mr. Boldt spoke of the avian flu and the massive concerns of migratory fowl from abroad travelling here
281 and potentially infecting our wetlands. Mr. Field commented that there was risk of contracting avian flu
282 by flying on an airplane too.

283

284 Field commented that it is not uncommon to see “nice homes” where people raise chickens.

285

286 Mr. Boldt commented on the adverse affects chickens can have on properties, considering the number
287 of chickens and amount of guano they produce, and the bacteria associated with that. He mentioned
288 the avian flu where massive amounts of chickens had to be destroyed.

289

290 Ms. Robin Reed, 279 Atlantic Ave, addressed the variance criteria and said that granting the variance
291 would be contrary to public interest because of the letters sent to the Board from all of Ms. Cheever’s
292 abutters opposed to this application. Ms. Reed said that the Applicant did not check with the Town
293 prior to purchasing her chickens to find out how many she could actually have. Ms. Reed said that there
294 is no hardship because at one time Ms. Cheever’s property was a working farm, but her lot was
295 subdivided out into a two-acre parcel, and that is how she purchased it, as a two acre lot; not a farm.
296 Ms. Reed said that Ms. Cheever has stated at previous meetings that the chickens on her property
297 cannot be seen or heard by the neighbors, she said that that is not true because she sees the chickens
298 daily and hears them crowing. Ms. Reed said that her property is worth less because of the chicken
299 activity on the Cheever property. She asked that the Board consider the facts of the case, not the
300 emotions associated with it.

301

302 Ms. Cheever said that she does not agree that agriculture activities diminish the value of property in an
303 agriculturally zoned town. Her property is in the R-1 zone, which allows agriculture. She said that her
304 property can sustain her and her family. She said that she would reduce her request down to 36
305 chickens and mentioned what little space they require on the property. She mentioned RSA 672.I.3.d
306 supporting agriculture on small lots, and said her two acres is a “good sized” lot. She said that there
307 have been no cases of avian flu in New Hampshire and the traffic issues are being addressed with NH
308 DOT. She said that substantial justice would be done because denying the variance would be taking her
309 rights away to sustain herself. Ms. Cheever said that she did not buy into a “gated community” and that
310 she purchased the property intending to use it as a farm. She said that her property is appraised higher
311 than all of her abutters, and submitted copies of the town property tax cards supporting that
312 information. She also said that her property is different from her abutters because it abuts conservation
313 land.

314

315 Mr. Stanton asked Ms. Cheever if she would like to modify her application by requesting 36 chickens,
316 maximum. Ms. Cheever said she would request 36 laying hens. Mr. Field commented that there is a
317 difference between 36 chickens, maximum and 36 laying hens. Ms. Cheever agreed to modify her
318 application to 36 chickens, maximum.

319

320 Ms. Cheever said that common sense and reasonable thinking should be used. She said that she
321 corrected the sound issue by getting rid of her roosters. She said she is trying to preserve her natural
322 rights to sustain herself and her family.

323

324 Ms. Cheever confirmed that after the case was dismissed on March 23, 2010 she bought more chickens
325 and put them on the front side of her property, and did so because of her rights; not to be antagonistic
326 toward her neighbors.

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327 Mr. Field referred to RSA 674:1, which is the general declaration of purpose for planning and zoning,
328 paragraphs III-b and III-d where it explains that towns cannot unreasonably limit agriculture within
329 communities. He asked Mr. Boldt why he thinks that the ordinance, section 508, trumps the general
330 statements by the general courts.

331
332 Mr. Boldt said that the RSA is intended to protect the working farm so that it is not carved up into house
333 lots or when a subdivision comes in next to it. He said that the Board needs to look at this provision,
334 672.1 in conjunction with RSA 674:32-c, which states that nothing in this Statute shall exempt new,
335 reestablished or expanded agricultural operations from generally applicable building and site
336 requirements. Further in the RSA it explains that Boards can grant waivers if there is a prohibition. Mr.
337 Boldt said that there was no prohibition because there is an allowed use, with a limited number of farm
338 animals. He further stated that there is a good debate going on to amend the current agriculture
339 ordinance, but has no relevance on the variance application.

340
341 Mr. Boldt read from the Rules of Procedure that he thought granted him the opportunity for rebuttal.
342 Mr. Stanton explained that the rule was intended for the applicant, but allowed him to speak.

343
344 Mr. Boldt addressed the following:

- 345 • Ms. Cheever wants to sustain her rights and desires, but ignores the rights of his clients.
- 346 • Not all properties are appropriate for all uses, he said owning more chickens that are allowed is
347 not a natural right.
- 348 • There is not an illegal “taking” issue when the ordinance is violated. Ms. Cheever built the coop
349 at the front of the property in the spring of 2009.
- 350 • Referring to RSA 672:1, the Statute does not state that there is an exemption if the owner owns 2
351 acres.
- 352 • The Board must consider the ordinance as valid; Ms. Cheever is asking the Board to interpret the
353 ordinance in a certain way.

354
355 Mr. Boldt said that he is not waiving his rights, but if the Board does decide to grant the variance, that
356 they also consider adding the following conditions:

- 357 • Limit Ms. Cheever to six chickens with no roosters
- 358 • eggs that the chickens produce can only be used for her family and cannot be sold anywhere
- 359 • The pen be a maximum of 10’x12’ and located at the back of the property
- 360 • The coop on the front of the property to be removed
- 361 • No free ranging chickens, and the guano be removed and not spread on the property
- 362 • Require that all debris and junk on the front of the property be stored in the barn (the Board has
363 the authority to add other restrictions per the Garrison v. Henniker case).
- 364 • If there is any violation to the conditions; the variance shall lapse.

365
366 Mr. Dick Wollmar, 111 Walnut Ave, member of the Agriculture Commission has had a farm for the past
367 33 years, and said that he takes issue with Mr. Boldt on several of his comments. He said that the Board
368 did the right thing on March 23, 2010 in dismissing the case because the issues were settled between
369 the neighbors. He further commented that agriculture is allowed in all zones in town which allows
370 “livestock” to be raised. He said the difference between an “animal” and a “chicken” is that a chicken is
371 poultry; it has feathers, animals have hair or fur, therefore there is no way a “chicken” is an “animal”. He
372 said that it was in his opinion that Ms. Cheever did not have to apply for a variance at all.

373

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374 Mr. Glenn Schwaery, PhD Graduate of UNH with a degree in Animal Nutritional Sciences, Chapel Road,
375 said that hair and fir are characteristics of a mammal, and a “chicken” is an “animal”.

376

377 Mr. Stanton closed the public hearing.

378

379 Mr. Stanton recessed the meeting at 9:10pm.

380 Mr. Stanton reconvened at 9:25pm.

381

382 The Board entered into deliberations:

383

384 Mr. Stanton referred to RSA 21:34-a – Farm, Agriculture, Farming. Under number 7 of the Statute it
385 reads *the raising, breeding, or sale of poultry or game birds*.

386

387 Mr. Stanton suggested that the Board come to a consensus on how they should interpret “farm animal”
388 in the ordinance. “Livestock” is defined in the ordinance.

389

390 Mr. Field said that since the Board does not know what the “drafters” meant in 1968 when creating the
391 ordinance, it would be unreasonable to conclude that “livestock” does not include “poultry”, in that
392 general section.

393

394 The Board agreed that under the term “livestock”, under the agricultural definition of the ordinance,
395 includes “poultry”.

396

397 Mr. Stanton went over the evidence received for this case:

398

399

- Picture of a chicken coop at 264 Atlantic Ave.
- Aerial photo of 264 Atlantic Ave
- Plot diagram
- Multiple photos of 261 Atlantic Ave
- Series of pictures with multiple dates
- UNH Cooperative Extension handout
- Email from Robert Field to the Board and attached to it a copy of RSA 21:34 –a
- A Definition from Black’s Law Dictionary of “animal”
- Letter from Mrs. Kierstead dated 2/23/2010
- Letter from Mr. Haggerty dated 2/26/2010
- Copy of RSA 437 sale of chicks, rabbits and gosling under 4 weeks
- Letter from Mr. & Mrs. Chevalier dated 2/18/2010
- Application
- Stipulation and agreement Fullerton vs. Cheever
- Copy of the deed
- Petition signed by people (not abutters) in favor of Ms. Cheever keeping her chickens

415

416 **1. Would granting this variance be contrary to the public interest?**

417

418 Mr. Stanton said that agriculture is a permitted use in all zoning districts. Mr. Field said that
419 granting the variance would not be contrary to public interest, based upon the State’s
420 proclamation to encourage agriculture.

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2. Would granting this variance be consistent with the spirit of the ordinance?

Mr. Field said that it is consistent with the spirit of the ordinance if you overlay reasonable interpretation, state mandates, and general legislative mandates. The number 4 doesn't make sense in some instances; sometimes you have to use "common usage" when determining the meaning of an ordinance.

3. Would substantial justice be done by granting this variance?

Mr. Field said that by granting the variance substantial justice will be done, because by granting the variance there are mutual benefits,, and even more benefits to the Town.

4. Would granting this variance result in diminished values of surrounding properties?

The Board discussed the criterion for diminished property values and the difficulty in proving such. Mr. Stanton said there was a real difference between a Realtor's comparative market analysis and someone's appraisal. Mr. Field said that there is no requirement that you have to be a MAI; what you need is knowledge of the circumstances of the area. Mr. Field said that each member needs to ask themselves if granting the variance to allow more than 4 chickens is going to diminish the value of surrounding properties. Mr. Stanton said, as a Realtor, he would need to know if there were roosters on the property because if there were roosters it would affect his obligation to inform the buyer of what is going on. He mentioned that the rooster issue was taken care of through the signed agreement between Mr. Fullerton and Ms. Cheever.

5. Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.

Mr. Field said that the Board needs to find some uniqueness of the property. He pointed out that the property abuts conservation land and because of that it is unique to the abutting properties. Mr. Field commented on fair and substantial relationship, and said that having poultry on the property is permitted; it's the intensity of the use of the poultry that's the problem.

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

Mr. Field said that the proposed use is a reasonable one. Mr. Stanton said that having just 4 chickens is not necessarily a hardship, but it interferes with what they want to do with a family of five, and it may be a hardship not to have more than 4 chickens to feed their family. Mr. Stanton

469 said that because it was on the North Hampton historic list of 100-year old houses it has value
470 that distinguishes it from the neighborhood.

471
472 The Board discussed various conditions to impose on the Applicant if approved that would take both the
473 Applicant's and the neighbor's concerns into consideration.

474
475 **Mr. Field Moved and Ms. Lermer seconded the Motion to grant the variance request for Case**
476 **#2010:04 – Sylvia Cheever from Article V, Section 508.4 with the following conditions:**

- 477
478 **1. No more than 30 hens; no roosters**
479 **2. No sale of eggs or barter on the premises**
480 **3. Chicken coop at the front of the property to be removed**
481 **4. No free ranging of chickens**
482 **5. Manure can be collected to a maximum of one cubic yard and be kept no closer than 50-feet of**
483 **any property line, and kept in back of the barn**
484 **6. The variance is specific to the Applicant, Ms. Sylvia Cheever, and be sunsetted to, the earlier of**
485 **July 31, 2011, or a date on which is determined by the Code Enforcement Officer that the**
486 **owner is in violation of the conditions**
487 **7. The Pen be created for outdoor confinement of the chickens as depicted in red on sheet 2 of 2**
488 **on plan #D-17112**

489 Mr. Field asked that the decision letter be circulated to the Board members prior to sending it out to Ms.
490 Cheever. Mr. Stanton agreed.

491
492 **The vote was unanimous in favor of the motion 5-0.**

493
494 Mr. Stanton explained the 30-day appeal period to Ms. Cheever, the Applicant.

495
496 Mr. Stanton seated Ms. Wood for Ms. Lermer.

497
498 **3. 2010:05 – Brewster Investment, LLC, 16 Alexander Drive, Hampton, NH 03842.** The Applicant
499 (1) requests a variance from Article IV, Section 406 to permit the erection of a new home with an
500 attached garage 21.1 feet from Chapel Road on a vacant approved building lot of record, and (2)
501 requests a special exception for Article IV, Section 409.12 to permit the erection of the
502 home/garage within 20 feet from an inland wetland. Property owner: Eric R. Cosman, 872
503 Concord Ave., Belmont, MA 02178; property location: 20 Chapel Road; M/L 005-032; zoning
504 district R-2. This case is continued from the March 30, 2010 ZBA Meeting.

505
506 Due to the late hour it was suggested that Case #2010:05 be continued to the May Meeting. Mr. Field
507 suggested continuing the Meeting to next week, and the Board agreed to continue the Meeting to
508 Tuesday, May 4, 2010 at 6:30pm, in the Mary Herbert Conference room.

509
510 **Mr. Stanton Moved and Mr. Batchelder seconded the Motion to continue the Meeting to May 4, 2010**
511 **at 6:30pm in the Mary Herbert Room.**

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

513
514 **Minutes**

515

516 **March 23, 2010 Non Public Minutes** – Mr. Stanton suggested that the Board review the Non Public
517 Minutes and if there were any substantive changes then the Board would enter into Non Public Session
518 to amend them. Mr. Field suggested a minor change, and it was his opinion that the Board did not have
519 to enter into Non Public Session.

520

521 **Mr. Batchelder Moved and Ms. Wood seconded the Motion to approve the Non Public Minutes of**
522 **March 23, 2010 as amended.**

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

524

525 **February 23, 2010 Meeting Minutes, March 23, 2010 Meeting Minutes and March 30, 2010 Meeting**
526 **Minutes.**

527 **Mr. Stanton Moved and Mr. Turchan seconded the Motion to table the aforementioned Meeting**
528 **Minutes to the May 4, 2010 Meeting.**

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

530

531 **Mr. Field Moved and Ms. Wood seconded the Motion to approve the March 23, 2010 Site Walk**
532 **Minutes regarding the Cheever property at 264 Atlantic Ave.**

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

534

535 Respectfully submitted,

536

537 Wendy V. Chase

538 Recording Secretary

539

540 **Approved June 6, 2010**

541