



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, October 26, 2010 at 6:30pm
Town Hall**

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

Attendance

Members present: Robert B. Field, Jr., Chair; David Buber, and George Lagassa

Members absent: Michele Peckham, Vice Chair and Richard Stanton

Alternates present: Phelps Fullerton and Jonathan Pinette

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

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

Mr. Field convened the Meeting at 6:32pm.

Mr. Field invited the Board Members and those in attendance to rise for a Pledge of Allegiance and noted that reciting the Pledge of Allegiance is for those who choose to do so and has no bearing on the decision making of the Board or the rights to appear before the Board.

Mr. Field introduced the Members of the Board and noted that two of the Primary Members were absent and two Alternate Members were available if the Applicant chose to request a full member Board.

Ms. Chase reported that the October 26, 2010 Agenda was properly posted in the Hampton Union on October 12, 2010, and at the Library, Town Clerk's Office and Town Office.

Mr. Field swore in witnesses.

Mr. Field explained the conduct of the meeting and the Board's Rules of Procedure.

There was no unfinished business to address.

Minutes

September 28, 2010 – Mr. Buber suggested an amendment to line 57, within a statement made by Mr. Stanton to include *law suit* after potential. The Board agreed and Mr. Field said that if he had issue with the change Mr. Stanton could amend it further at the next meeting. Minor amendments were made to lines 115 and 123.

Mr. Buber Moved and Mr. Lagassa seconded the Motion to approve the Minutes of September 28, 2010 as amended.

The vote passed in favor of the Motion (2-0-1). Mr. Field abstained because he was not in attendance at the September 26, 2010 Meeting.

New Business

2010:08 – J&S Greystone Village, LLC, PO Box 1627, North Hampton, NH. The Applicants request a variance from Article IV, Section 406.5 to allow a commercial use and a residential use on the same parcel in the I-B/R district. Property owners: J&S Greystone Village, LLC; property location: 223 Lafayette Road; M/L 021-001-000; zoning district: I-B/R.

In attendance for this application:

Attorney Peter Saari, Casassa and Ryan

Sean Roy, Greystone Village Project Manager

Mr. Saari represented the Applicants and requested a full board to consider the Application for case #2010:08.

Mr. Field seated Phelps Fullerton and Jonathan Pinette for Ms. Peckham and Mr. Stanton.

Attorney Saari began his presentation and Mr. Field said that a historical perspective would be helpful.

Attorney Saari said that the Greystone Village project began with the original owners promising things they did not deliver, and the things that were done were not done well. He said that the tenants did not get what they paid for and the services they received were not good. He said none of this happened under Joe Roy's ownership. Mr. Roy took over ownership of the park on February 3, 2010. He has made many improvements to the park and has received no complaints of the services provided by him.

Mr. Saari explained that the vacant building was initially intended to be used as a recreational/social clubhouse. He said that Mr. Roy and the tenants reached an agreement to reduce the rent by eliminating the clubhouse. He said that based on the current ordinance residential and commercial use is not allowed on the same lot at the same time. He said Mr. Roy would like to rent the vacant building as office space and that the lot is not large enough to subdivide out; it consists of 1.2 acres.

The following facts were discussed:

- The original developer received a variance to allow part of the mobile home park in the Residential 3 zone (*Secretary's note: The zones were changed in 2009 by town vote; R-3 was combined with R-1 or R-2; Greystone Village is currently in the R-1 zone*).

- The “clubhouse” and 20 of the lots within the development are located in the I-B/R district; the remaining 42 lots of the development are in the R-1 zone.
- All of the mobile homes are owned by the tenants and the lots are leased from J&S Greystone Village, LLC.
- The section of the park closest to Lafayette Road (Route 1) is on its own septic.
- The building was never going to be used as residential; it was not built as a home.
- The building has been used as an office to sell the mobile homes at one time.
- The preference of use is an Attorney’s office; it’s divided into 4 rooms and can accommodate two attorneys, a secretary and a small waiting area.
- The new leases do not include the use of a “clubhouse” and the tenants that bought into the development when it included use of the “clubhouse” signed an agreement releasing their rights to the use of the “clubhouse”. Mr. Fullerton asked if the applicant could produce copies of the signed agreements. Mr. Saari explained that they did not have copies with them but would have copies made for the Board.
- The plan presented did not depict the “clubhouse” on the lot. Mr. Wilson spoke from the audience and said that he signed the approved plan as Chair of the Planning Board. The page of the plan where the “clubhouse” is depicted was not presented by the Applicant. The Applicant said that they would provide a copy for the Board.

Mr. Field questioned the size of the building and Mr. Sean Roy estimated it to be 35’ x 40’. He did not have the exact measurements with him.

Mr. Fullerton questioned the “Kane” sign on the property offering space to rent. Mr. Sean Roy said that his father, Joe Roy signed a contract and put up the sign prematurely; he did not know he needed approvals from the Planning or Zoning Boards to rent out the building.

Mr. Buber asked if the 21 parking spaces and 2 handicapped parking spaces for the “clubhouse” were ever put into place and Mr. Roy said that there is a parking lot but the spaces were never “marked” out. He explained that the building sits on a slab and has a stairway that leads to a small area with a five-foot knee wall, and the building has two bathrooms.

Mr. Field asked what the capacity was for the septic. Mr. Roy said that there is a very high tech septic system being used; it’s called “clean water” solution system. He did not have a copy of the septic plan. Mr. Field said that the Board should have a copy of the septic approvals to see what the septic is designed to be used for.

Mr. Saari explained that the mobile home park is one lot and not a subdivision and that the “clubhouse” and the lot it sits on is an integrated unit. The mobile homes are owned by the tenants and the land is leased to them. Mr. Lagassa asked if the tenants were notified as abutters and Mr. Saari said that they were not because they are part of the lot; not abutters to it. Ms. Chase informed the Board that the tenants were all notified regardless.

Mr. Roy explained that the maintenance around the “clubhouse” will not be the responsibility of the lessee; Mr. Roy will maintain the front area with plowing, mowing and landscaping.

Mr. Field opened the Public Hearing for all those in favor of the Application.

Jackie MacDougall, 26 Aspen Way – Ms. MacDougall said that she bought her home from GFI, the previous owners of the development, and since Mr. Roy took it over it has been absolutely wonderful. She said that she signed an agreement with Mr. Roy releasing her rights to the use of the “clubhouse”. She had signed the agreement and seemed to be fine with it.

Gail Atherton, 19 Aspen Way – Ms. Atherton said that she is a new resident to Greystone Village and is in favor of not having the “clubhouse”. She said that she is very pleased with how Mr. Roy maintains the park. She said that use of the “clubhouse” is not part of her lease that she signed in June 2010.

Mr. Field opened the Public Hearing to those neutral or opposed to the proposal.

Dr. Arena, 8 Dancers Image – Dr. Arena said that he is neither for nor against the proposal and disclosed that he is a Member of the Planning Board but was speaking as a resident of North Hampton; he was not representing the Planning Board or speaking as a Member of the Planning Board. He said that if the Applicant continues his proposal with the Planning Board he will not recuse himself from the case. He commented that Mr. Roy is a good businessman and will do a good job operating Greystone Village. He said that the original plan included a “clubhouse” to be used and paid for by the tenants within the community and that the building was never presented to be used commercially. He said that the building was originally presented to the people to be used as a “clubhouse” and should remain as so.

Phil Wilson, 9 Runnymede Drive – Mr. Wilson said that he is neither for nor against the proposal submitted by Mr. Roy. He said that Mr. Roy will need to go before the Planning Board for a change of use application for approval to change the use of the vacant building from the originally approved “clubhouse”. He said that the Planning Board addresses septic and parking issues and is not sure that the issues are relevant for a variance application. He also stated that the plan the Planning Board approved included the “clubhouse”.

Mr. Field said that the ZBA acknowledges the fact that the Planning Board will be addressing the parking and septic issues, but an incomplete plan was submitted to them that does not even show the “clubhouse” and they would like to have a more complete plan to review.

Mr. Field closed the Public Hearing reserving the right to Mr. Saari, the Board and members of the public to raise questions or comment on anything new that comes in if the Board decides to defer this case and make a judgment next month.

It was determined that full capacity of the park is 62 units and Mr. Lagassa asked if the current tenants are paying 1/62 of the maintenance costs for the existing vacant building or is the figure prorated to the number of occupied units. It was unclear to whether the tenants were paying for the maintenance to the building or if Mr. Roy was bearing the total costs associated with it. Mr. Sean Roy will get the correct information to the Board.

Mr. Field suggested that the case be continued to the next meeting.

Mr. Buber questioned whether the lot in question was a developed lot or not. He is not sure that a variance request to Section 406.5 is germane. He said that if there were another section of the ordinances more relevant it would be up to the Applicant to figure out which one to request a variance from. He read the section into the record: *A lot in the I-B/R District that is presently utilized for business*

purposes shall not be used for residential purposes. Any existing undeveloped lot may be used for either a business or residential purpose but not for both. Mr. Fullerton also questioned whether a variance would be required.

Mr. Lagassa Moved and Mr. Fullerton seconded the Motion to open the business meeting for the purpose of an inquiry of Mr. Saari.

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

Mr. Saari responded to the question raised by Mr. Buber. He said that Section 406.5 is not the best written section of the zoning ordinances but has confidence in the Building Inspector's interpretation of it. He said that he considers the development has one tract and it seems to him to be "developed".

Mr. Field declared as Chair that Section 406.5 applies to the problem and that the Board has the legal capacity to answer it as a Board one way or the other. He said that was his ruling and offered any Member of the Board to challenge his ruling if they wanted to.

Mr. Lagassa Moved and Mr. Pinette seconded the Motion to support the Chair's ruling.

The vote passed in favor of the Motion (4 in favor, 1 opposed and 0 abstention). Mr. Buber opposed.

Mr. Buber commented that the November Meeting is full with unfinished business and suggested that if the case were to be continued that it be added first on November's Agenda.

Mr. Buber Moved and Mr. Lagassa seconded the Motion to continue case #2010:08 – J&S Greystone Village, LLC to the November 30, 2010 Meeting.

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

The Board requested the following information from the Applicant:

- A complete site plan depicting the "clubhouse"
- Exact dimensions of the "clubhouse"
- Copies of approved septic plans
- Copies of signed releases/waivers to the "clubhouse" for all lots within the development
- A written document as to who is paying for the maintenance of the current vacant building originally designated as the "clubhouse".

Mr. Lagassa reported on the Code of Ethics Ad hoc Committee Meeting. He said that the Committee met on October 6, 2010 and the members examined Code of Ethics put forth by the Towns of Durham and Bedford. He volunteered to compose a draft of the first part of the Code of Ethics for their next meeting scheduled for November 3, 2010 that will be along the structural lines outlined in the Committee's minutes of September 28th.

Communications/Correspondence and Miscellaneous

The Board addressed correspondence from Member Rick Stanton. Mr. Field noted that because it dealt with the Rules of Procedure Mr. Pinette and Mr. Fullerton, because they are not Primary Members, would not be able to participate, but allowed them to remain seated at the table.

Mr. Stanton sent e-mails to Mr. Field on September 16, 2010 and September 26, 2010 requesting a change to the Rules of Procedure regarding the new law that took effect on July 13, 2010 adding mandatory provision to the Statute 676:1; it mandates that every Land Use Board shall include when and how an Alternate may participate in Meetings of the Land Use Board.

Mr. Field said that this Board has dealt with the rights of Alternates in Section 4.E. of the Rules of Procedure. He said that Mr. Stanton was helpful in bringing the new law to the Board's attention, but the Board may have already considered it in the language set forth in Section 4.E., therefore the Board does not need to take any action.

Mr. Buber concurred and said that the Board's Rules of Procedure are adequate.

Mr. Field said that when an Alternate is seated on a case it is his understanding that the proper process is that those Alternates remain seated on that case until it is completed, and the Board will follow with that procedure going forward. Mr. Field said that the Board encourages Alternates to attend any Meeting of the Board as members of the public and speak as members of the public, but they don't have the right of "cross examination" or "inquiry" other than through the Chair.

Mr. Field said that the fundamental principles in selecting an Alternate to be seated are not to "cherry pick" Alternates for certain cases. He said that there may be cases where knowledge of a particular Alternate would be paramount for a particular case. Mr. Field said that the way it's written in the Rules of Procedure is that it is the Zoning Administrator's responsibility to present to the Chair sufficient Alternates at any Meeting, and the appointed powers of the Alternates rests with the Chair. Mr. Field said that the notion was to expand the table to include all of the Alternates. He said that the Board needs to remember that there is a distinction between Elected Members and Appointed Alternates, and the other matter to consider is that it's expensive for Applicants to come before the Board, and if the table is expanded to people with rights of inquiry, it may take more time potentially expanding the cost for the Applicant.

Mr. Buber commented that the Board has an excellent set of Rules of Procedure, including addressing Alternates, and does not see the need to change them.

Mr. Lagassa asked that the Chair add Mr. Stanton's correspondence to the November Agenda under "other business" to give Mr. Stanton a chance to comment.

Mr. Field noted that Mr. Stanton asked that the topic of Alternates be discussed at this meeting. He said that it is Mr. Stanton's right to bring the topic up for discussion again, but he does not see the need to change a set of rules that operate quite well now.

Mr. Lagassa said that he agrees that the Rules of Procedure are adequate and are in compliance with the revised laws.

Mr. Buber commented that under this Administration all Alternates get a complete package of each case so they have the opportunity to be well versed on each case and better prepared to participate as members of the audience.

Mr. Field said that Ms. Chase will continue to have an Alternate available for all Meetings and if there are known absences she is to consult with Mr. Field prior to running down the list so if a case has

“special needs” he can pick a suitable Alternate. Mr. Field wanted it noted the distinction between “cherry picking” for results and “cherry picking” for expertise; and he would be picking an Alternate for expertise.

Mr. Buber questioned the order of the Agenda, and thought that the Board decided to take action on the minutes as the first order of business.

Mr. Field agreed that he would like to approve the minutes as the first order of business, but Section 5.M. of the Rules of Procedure have not been revised. As Chair he will rearrange the Agenda each month to address the Minutes of the prior Meeting(s) first.

Mr. Field asked Ms. Chase to add the order of business within Section 5.M. to the Agendas.

Mr. Buber Moved and Mr. Lagassa seconded the Motion to adjourn the Meeting at 8:22pm. The vote was unanimous in favor of the Motion (5-0).

Respectfully submitted,

Wendy V. Chase

Recording Secretary

Approved November 30, 2010