



**Meeting Minutes  
Town of North Hampton  
Zoning Board of Adjustment  
Tuesday, November 30, 2010 at 6:30pm  
Town Hall, 231 Atlantic Avenue**

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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:** Robert B. Field, Jr., Chair; Michele Peckham, Vice Chair; Richard Stanton, David  
14 Buber, and George Lagassa

15  
16 **Members absent:** None

17  
18 **Alternates present:** Jennifer Lerner, Phelps Fullerton, and Jonathan Pinette

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. Field convened the Meeting at 6:30pm.

26  
27 Mr. Field invited the Board Members and those in attendance to rise for a Pledge of Allegiance and  
28 noted that reciting the Pledge of Allegiance is for those who choose to do so and has no bearing on the  
29 decision making of the Board or the rights to appear before the Board.

30  
31 Mr. Field introduced Members of the Board.

32  
33 Ms. Chase reported that the November 30, 2010 Agenda was properly posted in the Portsmouth Herald  
34 on November 17, 2010, and at the Library, Town Clerk's Office and Town Office.

35  
36 Mr. Field swore in witnesses and asked that if anyone wishing to have any Member of the Board  
37 disqualified from any of the cases this evening to do so at this time. There were no requests for  
38 disqualification.

39  
40 **October 26, 2010 Meeting Minutes** – The Board reviewed the minutes and typographical amendments  
41 were made. Mr. Buber Moved and Mr. Lagassa seconded the Motion to approve the October 26, 2010  
42 Meeting Minutes as amended. The vote was unanimous in favor of the Motion (5-0). Mr. Fullerton and  
43 Mr. Pinette voted from the audience.  
44

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45 Mr. Stanton called for a Point of Order, and was recognized by the Chair. He pointed out that Alternate  
46 Members Mr. Pinette and Mr. Fullerton were not seated when the vote on the October 26, 2010  
47 Minutes took place.

48  
49 Mr. Field agreed that that was unusual and corrected the situation by asking Mr. Pinette and Mr.  
50 Fullerton to join the Board to vote on the October 26, 2010 Meeting Minutes.

51  
52 Mr. Lagassa withdrew his second to the prior Motion; the Motion was withdrawn.

53  
54 **Mr. Buber Moved and Mr. Lagassa seconded the Motion to approve the October 26, 2010 Meeting**  
55 **Minutes as amended. The vote was unanimous in favor of the Motion (5-0).**

56  
57 **Unfinished Business**

58  
59 Mr. Field explained that Members Mr. Stanton and Ms. Peckham were not present for the October 26,  
60 2010 Meeting and Alternate Members Mr. Pinette and Mr. Fullerton were seated for them for case  
61 2010:08 – J&S Greystone Village, LLC. It was the consensus of the Board at the October 26, 2010  
62 Meeting that when an Alternate is seated on a particular case that the Alternate remain seated on that  
63 case until it is completed. Mr. Field asked that Mr. Pinette and Mr. Fullerton to sit in place of Mr.  
64 Stanton and Ms. Peckham to continue with case #2010:08 for the entire Application process.

65  
66 Mr. Stanton called for a Point of Order, and was recognized by the Chair.

67  
68 Mr. Stanton quoted from the Board's Rules of Procedures, Section 5.B. *When an Alternate has been*  
69 *seated for a Primary Member due to recusal, such Alternate Member shall sit to the extent possible for*  
70 *the entire application, including any and all appeals.* He said that his absence from case #2010:08 was  
71 not because of a recusal and explained that he viewed the video recording of the October 26, 2010  
72 Meeting (when the case was first presented) twice, and feels qualified to sit on the case. He said that it  
73 was his right to do so as a Primary Member of the Board. Mr. Stanton said that if Attorney Saari, who  
74 represents the Applicant, requests that Mr. Stanton recuse himself from case #2010:08, he would do so.  
75 Mr. Stanton said that it was in the best interest of the people, because he was elected to represent  
76 them, that he sit as a Primary Member of the Board for case 2010:08 – Greystone Village, LLC.

77  
78 Mr. Field said that Mr. Stanton read Section 5B of the Rules correctly, but the intention and purpose of  
79 the Section when read in its entirety is to keep consistency with the case processing and decision  
80 making. He said a point was made at the last Meeting that the appointed Alternates would remain  
81 seated on the case until completed. He referred to the next paragraph 5.C. in the Rules of Procedure  
82 that refers to absences and disqualifications and that the (2) two paragraphs need to be taken into  
83 consideration when interpreting the intent of the Section.

84  
85 Mr. Saari was invited to make a request as to who should be seated on his Client's case 2010:08 –  
86 Greystone Village, LLC.

87  
88 Mr. Saari said that he would ordinarily leave it up to the Board to decide who should be seated, but said  
89 that it was represented at the last Meeting that the same five (5) Members would be seated for case  
90 2010:08, which includes Alternates Mr. Fullerton and Mr. Pinette. He also feels that both Mr. Stanton

91 and Ms. Peckham are capable of reviewing the video tapes and making a decision based on those tapes,  
92 and that he has no preference, and left the decision up to the Board.

93 Ms. Peckham said that she relied on the fact that she would not be seated for case #2010:08, therefore  
94 she did not review the video tape of the previous Meeting. She requested that whoever sat in her stead  
95 at the last Meeting continue to do so for the remainder of this case #2010:08.

96  
97 Mr. Buber referred to Section 5.C. of the Rules of Procedure and said that it highlights the intent and  
98 past practice of how the Board has handled the continuation of Alternates on a case. He read the  
99 Section into the record: *A quorum for all meetings of the Board shall be three (3) members, including*  
100 *Alternate Members sitting in the stead of Primary Members. If any Primary Member is absent from any*  
101 *meeting or hearing, or disqualifies himself/herself from sitting on a particular case, the Chair shall*  
102 *designate one, or more of the Alternate Members to sit in place of the absent or disqualified Member,*  
103 *and such Alternate Member shall be in all respects a full member of the Board while so sitting.* Mr.  
104 Buber said that it has been the Board's past practice that an appointed Alternate continues to sit on a  
105 case for the entire process and he would like to continue following that process.

106  
107 Mr. Lagassa and Ms. Peckham agreed with Mr. Buber. Ms. Peckham said that she has been on the  
108 Board, twice as Vice Chair for a number of years and it has been the Board's past practice that an  
109 Alternate sitting on a case remain seated for the entirety of that case.

110  
111 Mr. Stanton said that he was the Chair of the Board for two years and on cases that were continued  
112 there were rotating Alternates unless there was a case of recusal. He said that it is his understanding of  
113 the Rules of Procedure that a Primary Member that is elected by the People should stay there because  
114 an absence other than recusal does not rise to the level that you must be replaced for that entire case.  
115 He said it is a basic right for the Primary Member to sit and represent the people as she/he was elected  
116 to do so. Mr. Stanton said that he and Mr. Field went through the changes to the Rules of Procedure  
117 together and they discussed specifically when an Alternate recuses themselves and addressed it Section  
118 5.B.

119  
120 Mr. Field said that he did work on the Rules of Procedure with Mr. Stanton but disagrees that they ever  
121 addressed the issue of Alternates when drafting paragraphs 5.B and 5.C.

122  
123 **2010:08 – J&S Greystone Village, LLC, PO Box 1627, North Hampton, NH. Property location: 223**  
124 **Lafayette Road; M/L 021-001-000; zoning district: I-B/R.** The Applicants request a Variance from Article  
125 IV, Section 406.5 to allow a commercial use and a residential use on the same parcel in the I-B/R district.  
126 Property owners: J&S Greystone Village, LLC. This case is continued from the October 26, 2010  
127 Meeting.

128  
129 In attendance for this application:  
130 Joseph Roy, Owner/Applicant  
131 Attorney Peter Saari, Representative to the Applicant

132  
133 **Mr. Buber Moved and Ms. Peckham seconded the Motion that the rule of the Meeting is that the**  
134 **Alternates that sat on case #2010:08 last month will be seated at the table to complete the case and**  
135 **Mr. Stanton will be invited to rejoin the Meeting as soon as the case is complete.**

136  
137 Mr. Field suggested that the Board discuss amending the Rules of Procedure regarding Alternates to  
138 clarify the rules dealing with Alternates at a future Meeting of the Board.

139

140 Mr. Lagassa commented that Mr. Buber and Ms. Peckham have stated that it has been the past practice  
141 of the Board to keep the Alternate seated for the full duration of the case that he/she is sitting on, but  
142 heard a conflicting statement from Mr. Stanton that it has not been the past practice of the Board.

143

144 Mr. Field said that he has sat on the Zoning Board for many years and has been the Chair for many  
145 years, and in the past the Board has endeavored to keep the same Alternate on the case for consistency.  
146 He pointed out that the current Rules were written two years ago. He said that when a case is  
147 continued there is a lot of information that is not easily transferrable, and in fairness to the Applicant it  
148 makes sense to keep the same Alternates on a case to the end.

149

150 **The vote passed in favor of the Motion to have Mr. Fullerton and Mr. Pinette be seated for Ms.**  
151 **Peckham and Mr. Stanton for case #2010:08 (3 in favor, 1 opposed, and 1 abstention). Mr. Stanton**  
152 **opposed and Mr. Field abstained.**

153

154 Mr. Field seated Mr. Fullerton and Mr. Pinette for Ms. Peckham and Mr. Stanton.

155

156 Attorney Pelech, representing Mr. Peter Horne, case #2010:02 approached the podium.

157 Mr. Stanton and Ms. Peckham were reseated.

158 Mr. Field recused himself.

159 Ms. Peckham assumed the Chair.

160

161 Mr. Pelech requested a continuance to case 2010:02 – Peter Horne to the December Meeting. He  
162 explained that he filed an Application for a Variance last week on behalf of Mr. Horne and would like  
163 both cases to be addressed at the December Meeting.

164

165 Ms. Peckham seated Ms. Lermer for Mr. Field.

166

167 Ms. Peckham asked that Mr. Pelech put his continuance request in writing and submit it to Ms. Chase  
168 for the permanent record.

169

170 The December Meeting is scheduled for December 14, 2010 at 9:00am. Mr. Stanton and Ms. Lermer  
171 both indicated that they would not be available at that time of day.

172

173 The Board discussed the Applicant's request to continue.

174

175 Mr. Buber asked if the Applicant's intent was to delay the Board's deliberation on the original Variance  
176 requests for case 2010:02 and take up the new Variance request first.

177

178 Ms. Peckham said that case 2010:02 has been closed for public input, but the new Variance request may  
179 have some bearing on the deliberations for case 2010:02.

180

181 Mr. Pelech explained that the Variance request they applied for last week is to amend condition #2 of an  
182 approved Variance in January 2009, which stated that the 3-story garage could not be used as a  
183 residence. The Applicant is requesting that condition #2 be removed and if the Board and Applicant  
184 reach an agreement then Mr. Field, the opposing party, would support the amendment and would also  
185 support the two Variance requests in case 2010:02. The Applicant would like the new Variance request,  
186 to delete condition #2 of case 2008:12, be acted upon first at the December Meeting, and if that request

187 is granted in allowing that the garage can be used as a residence, then a new residence would not need  
188 to be built and the second Variance would be to allow the subdivision of the property.

189

190 Ms. Peckham asked if the Applicant plans to withdraw the original Variance request if the Board  
191 approved the new Variance request. Mr. Pelech answered, "No", he explained that his client would still  
192 need a decision from the Board on case 2010:02 so that they could proceed by going to the Planning  
193 Board for subdivision approval.

194

195 Mr. Field said that both parties have been working together and are trying to resolve these issues in the  
196 best interest of the Town, and their own personal interests. Mr. Field said that they thought they would  
197 have a completed draft of their agreement at this Meeting but have been delayed for a number of  
198 reasons. He said that the Applicant and the Objecting Parties will present to the Board a series of  
199 conditions that would be agreeable to each of them, and that the Board will consider including in a  
200 granting of the Variance that has been requested. If the Board chooses otherwise the agreement would  
201 have provisions addressing such contingency.

202

203 Ms. Peckham asked if the current case #2010:02 would need to be reopened for new public testimony.

204

205 Mr. Pelech said that he did not think the Board needed to reopen case 2010:02. Mr. Buber said that it  
206 was his understanding that the Board would still be in deliberations on the Variance requests in case  
207 2010:02, but the Board would take action on the new Variance request, and depending on the outcome  
208 of that Variance request the Board could in fact go back and close deliberations on case 2010:02.

209

210 Ms. Peckham asked what would happen if the new Variance request is granted and the original Variance  
211 requests in case 2010:02 are denied. Mr. Pelech said that whatever the Board decides he and his client  
212 will deal with it accordingly.

213

214 The Board agreed to hold the December 14, 2010 Meeting at 4:00pm.

215

216 **Mr. Stanton Moved and Mr. Buber seconded the Motion to continue case 2010:02 – Peter Horne to**  
217 **the December 14, 2010 Meeting to be held at 4:00pm.**

218 **The vote passed in favor of the Motion (4 in favor, 0 opposed and 1 abstention). Ms. Lerner**  
219 **abstained.**

220

221 Mr. Field resumed the Chair.

222 Ms. Lerner left the Meeting.

223 Mr. Field seated Mr. Fullerton and Mr. Pinette for Mr. Stanton and Ms. Peckham.

224 Mr. Field called for a (5) five minute recess at 7:10pm.

225 Mr. Field reconvened the Meeting at 7:15pm.

226

227 **2010:08 – J&S Greystone Village, LLC, PO Box 1627, North Hampton, NH. Property location: 223**  
228 **Lafayette Road; M/L 021-001-000; zoning district: I-B/R.**

229

230 Mr. Saari gave a brief history on Greystone Village. He explained that when GFI owned the development  
231 prior to Mr. Roy they had offered the tenants of the community a (1) one-year lease that provided for a  
232 fixed sum to be payable by each tenant, and in addition to that the tenants were responsible to pay for  
233 all tax increases, snow removal, lawn maintenance and community facilities including the "clubhouse".

234 Mr. Roy purchased the park and set up new lease agreements with the tenants, and at that time

235 obtained release/waivers from the tenants acknowledging that they had no interest in the “clubhouse”.  
236 Mr. Roy’s lease was good for (5) five years and included the fixed rental fee, snow removal, lawn  
237 maintenance, and tax increases. The “clubhouse” is not offered in the new lease between the tenants  
238 and J&S Greystone, LLC.

239

240 The Board was in receipt of the following documents:

- 241 • The lease agreement between the tenants and J&S Greystone, LLC.
- 242 • A document that showed how the expenses of the “clubhouse” are being allocated; J&S  
243 Greystone are responsible for all expenses dealing with the “clubhouse”.
- 244 • Property tax card detailing the dimensions and assessment of the “clubhouse”.
- 245 • Packet of information that is given to the tenants titled Information Greystone Village Age  
246 Restricted Community. Mr. Saari referred the Board to the last pages of the document where it  
247 states that a community center or “clubhouse” is not offered to the tenants.
- 248 • A copy of the August 5, 2010 Planning Board Minutes. He referred the Board to page 5 of the  
249 Minutes where it was discussed that the “clubhouse” is not being advertised as part of the sale  
250 package for the current lots.
- 251 • Copies of signed waivers from the original tenants waiving their rights to the “clubhouse” facility  
252 and a signed release from Mr. Roy for all remaining lots from the rights to the “clubhouse”  
253 facility.
- 254 • Approval for Construction dated 1/5/2006 that states that the septic is adequate for a facility for  
255 a 160 person meeting room, office and exercise room for 8 occupants; 2,000 gallons per day  
256 max.
- 257 • A copy of the site plan depicting the “clubhouse”, sheet C1 signed by Mr. John Chagnon and  
258 supporting data for the leach field system.
- 259 • A copy of correspondence on who is responsible for maintenance to the current “clubhouse”.

260

261 Mr. Field opened the Meeting to those in opposition of case #2010:08.

262 There was no public comment.

263

264 Mr. Buber referred to the copies of signed waivers from the tenants and compared them to the sold  
265 units in the development and came up with more signed waivers than sold units.

266

267 Mr. Roy said that the original (8) tenants that had a lease that included the “clubhouse” facility signed  
268 the waivers. The additional (9) occupied units are under the new lease agreement that does not include  
269 the “clubhouse” and did not need to sign the waiver, but two people signed them in error.

270

271 Mr. Field closed the Public Hearing on case 2010:08 and invited comments from the Members of the  
272 Board.

273

274 Mr. Pinette asked if the Board could impose restrictions on how the facility could be used, and Mr. Field  
275 answered that the Board can impose conditions on any Variance request.

276

277 Mr. Lagassa said that the Applicant has met all 5 tests to the Variance request and had no objections in  
278 granting the Variance, but would like to consider adding conditions.

279

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280 Mr. Buber asked Mr. Roy if he were granted approval for the Variance and leased the building as office  
281 space, would he ever consider converting the building back to a “clubhouse” if the tenants wanted him  
282 too.

283  
284 Mr. Roy said that if he sold the park he would include the “clubhouse” in the sale of the development.  
285 He said that by law the tenants receive “first refusal” in the sale of a mobile home park. He said that  
286 rental income from the “clubhouse” enables him to provide the services to the tenants, such as snow  
287 removal and lawn maintenance.

288  
289 Mr. Field noted for the record that screening, parking issues and traffic flow are to be addressed by the  
290 Planning Board and the questions the Zoning Board has asked are in no way to be considered  
291 determinative of, or to interfere in the prerogatives of the Planning Board.

292  
293 Mr. Buber commented that he is not trying to interfere with the Planning Board; the Zoning Board  
294 determines if a proposal is in the best interest of the Town and considers the public’s health, safety and  
295 welfare.

296  
297 The Board discussed proposed conditions if the Variance were granted.

298  
299 Mr. Fullerton said that the septic system is “state of the art”, and is not concerned with the water  
300 consumption, but would like to see the building used for professional offices and the hours of operation  
301 would be prudent in the list of conditions.

302  
303 Mr. Field suggested that the hours of operation should be for the reception of clients only and not  
304 limiting the Professionals themselves from working late. Mr. Fullerton agreed.

305  
306 Mr. Lagassa said that limiting the hours will be difficult to enforce, but sees no fault in stating it as a  
307 condition if approved.

308  
309 Mr. Buber suggested that the conditions the Board agrees upon should be reflected in the lease  
310 agreement between the landlord and the tenant. Mr. Buber also suggested that each Member of the  
311 Board receive a copy of the decision letter and be given the opportunity to make any comments or  
312 suggested changes to it before it is finalized.

313  
314 Mr. Roy said that he has someone interested in leasing the property subject to the outcome of this  
315 Meeting. He said that Mr. Saari put the lease agreement together for Mr. Roy and it includes most of  
316 the suggested conditions the Board has been discussing. Mr. Roy kept control over the plowing, mowing  
317 and exterior maintenance of the building to ensure that it will be kept maintained. Mr. Roy said that  
318 limiting the hours of receiving clients may be an issue. He said that the professional interested in leasing  
319 the Building produces classical music and may need to meet a client late in the evening.

320  
321 Mr. Field went over the proposed conditions for approval – 1. Professional office space for professional  
322 occupations that limit their consumption of water. 2. With regard to the office no assessment charges or  
323 fees of any kinds passed on to the tenants including but not limited to insurance, taxes and  
324 maintenance. 3. Hours of operation for the receipt of clients/customers limited to 7:00am to 8:00pm.  
325 4. The conditions to be included in the landlord’s lease with any tenant as a condition of occupancy.

326

327 **Mr. Buber Moved and Mr. Lagassa seconded the Motion to grant the Variance request for case**  
328 **#2010:08 – J&S Greystone Village, LLC from Article IV, Section 406.5 to allow a commercial use and a**  
329 **residential use on the same parcel in the I-B/R district with the following conditions:**  
330 **1. The building is to be used only for professional office space by professional occupations that limit**  
331 **the consumption and discharge of water when providing or performing services, such as, by way of**  
332 **example, architects, attorneys, accountants, and providers of financial services and products.**  
333 **2. No assessments, charges or fees of any kind associated with the maintenance and operation of the**  
334 **building will be passed on to tenants, including but not limited to, insurance, taxes, snow removal and**  
335 **repairs/maintenance.**  
336 **3. The reception and servicing of clients/customers will be limited to the hours of 7:00am to 8:00pm.**  
337 **4. The within special conditions shall be specifically set forth in writing as terms and conditions of the**  
338 **Landlord's lease or rental agreement with any and all tenants of the building.**  
339 **The vote was unanimous in favor of the motion 5-0.**

340  
341 Member Buber requested that a "draft" of the proposed decision letter be distributed to all Board  
342 Members sitting on the case. Chairman Field agreed.

343  
344 Mr. Field explained the 30-day appeal period to the Applicant.

345  
346 Mr. Field reseated Mr. Stanton and Ms. Peckham.

## 347 348 **New Business**

349  
350 **2010:09 - Christina McAlister, 12 Lafayette Terrace, North Hampton, NH 03862. Property location: 12**  
351 **Lafayette Road; M/L 021-011-000; zoning district I-B/R.** The Applicant petitions for a special exception  
352 under Article V, Section 509 to run a private, at home daycare with no more than three children  
353 excluding her own child. Property owner: Seth McAlister.

### 354 355 In attendance for this application:

356 Christina McAlister, Applicant

357 Seth McAlister, Owner

358  
359 Ms. McAlister presented her case. She explained that she would like to run a daycare business within  
360 her home to care for (3) three preschool children other than her own child between the hours of 6:00am  
361 to 6:00pm.

362  
363 Mr. Field asked if she had spoken to her neighbors about the proposal and she said that she had and one  
364 of her neighbor's just signed a letter stating she did not object to the proposal.

365  
366 Ms. McAlister went over the criteria for the Special Exception from Article V, Section 509 – Family  
367 Daycare

### 368 369 **509.1-The family day care shall be carried on by a member of the family residing in the dwelling unit.**

370 Ms. McAlister said that she resides at 12 Lafayette Terrace and would run the daycare herself without  
371 outside help. Ms. McAlister explained that if she were sick she would ask a neighbor to come in until  
372 the parents could come and pick up their children. She said that she planned to operate the daycare for  
373 approximately 15 years.



374 **509.2-No more than six preschool children on a full-time basis and three school age children on a part-**  
375 **time basis shall be cared for.** Ms. McAllister said that she would only care for (3) three preschool  
376 children other than her own, up to (3) three preschool children (maximum of (6) six preschool children)  
377 between the ages of 6 months and 6 years old.

378  
379 **509.3-A license from the Bureau of Child Care Standards & Licensing, Division of Public Health Services**  
380 **of the N.H. Department of Health and Welfare is required.** Ms. McAlister said that she has contacted  
381 the State on several occasions and they informed her that she is exempt from licensing because she  
382 would only be caring for up to (3) three additional children, other than her own, and the State does not  
383 require a license in that case.

384  
385 **509.4-Additional considerations shall include the impact on the neighborhood, traffic impact,**  
386 **adequacy of drop-off and pick-up area and provision for a safe outdoor play area.** Ms. McAlister said  
387 that she removed the fencing from the front yard to accommodate parking off of the road and will only  
388 be adding (3) three more vehicles to the local traffic on the road when children are dropped off and  
389 picked up. She said the backyard is fenced in for the kids to play and protect them from going out into  
390 the road. Ms. McAlister would use her dining room as a craft area/play area/nap time area. She said  
391 they would have their own nap time mats and she would purchase food separate from her own to be  
392 prepared in the kitchen.

393  
394 Ms. McAlister also addressed the criteria under Section 507 – Home Occupation, even though she did  
395 not apply for a Special Exception under that Section of the Ordinance.

396  
397 Mr. Field asked if a health inspection was required from the Town.

398  
399 Mr. Mabey spoke from the audience and informed the Board that he is the Deputy Health Officer for the  
400 Town. He said that a health inspection from the Town is not required for this type of business, but the  
401 Fire Chief will inspect the smoke detectors to ensure they are working properly.

402  
403 Mr. Buber referred to the information provided by the Applicant indicating that she would be exempt  
404 from licensing because she would care for no more than (3) three children other than her own and  
405 asked if there were any other State compliances that are required, such as a background check. Ms.  
406 McAlister said that she contacted the State several times and there are no other requirements that she  
407 is aware of.

408  
409 Mr. Stanton asked if Ms. McAlister had a Child Care License, and she said she did not. He asked if she  
410 had any type of training to care for children, and she said that she has personal training being the  
411 Mother of a three year old.

412  
413 Mr. Stanton said that the Town requires a License, and in his opinion the Town may be liable if  
414 something happens to a child if they approve a Special Exception knowing that the Applicant did not  
415 comply with Section 509.3 - required Child Care License. He said that RSA 170.E. is the appropriate  
416 regulation that governs licensing. He said that it was his view that a license is a requirement and must  
417 be obtained by the Applicant. He suggested the Board consider granting the Special Exception with the  
418 condition that the Applicant obtain a Child Care License within (1) one year.

419  
420 Chairman Field invited Mr. Stanton to offer evidence of any cases or other documentation that  
421 supported his view on liability. Mr. Field pointed out that any “variance” granted is an exception to the

422 law and questioned whether or not Mr. Stanton's view is supportable. Mr. Stanton stated that he was  
423 not a lawyer and that such after investigation was his personal opinion as to the issue.

424  
425 The Board determined that the State does give licenses if the caregiver elects to comply with the  
426 provisions and be licensed even if the Applicant falls under the exempt status of caring for (3) three or  
427 less preschool children.

428  
429 Mr. Stanton said that even if the Board granted the Special Exemption with his suggested condition, the  
430 Applicant must obtain the license before starting the Family Daycare business. Mr. Stanton said that he  
431 thought that it would take approximately (1) one year to complete the proper training.

432  
433 Ms. Peckham said that in order to grant the Special Exception the Applicant must satisfy all of the  
434 requirements under the Ordinance and if there are any requirements that can not be satisfied, then the  
435 Applicant would need to request a Variance from those requirements. She said that granting a Variance  
436 would alleviate the liability issue, but if the special exception is granted without the Applicant obtaining  
437 a Child Care License then there is a liability issue.

438  
439 Ms. McAlister said that she bought an insurance policy from All State Insurance Company because they  
440 were the only Company that would insure a home with a Family Daycare. She said she has a  
441 contract/waiver for the parents to sign and disclose any health information about the child such as food  
442 allergies or any type of special needs.

443  
444 Ms. McAlister disclosed that she was a Certified Combat Life Saver in the United States Army National  
445 Guard, and was trained to perform life saving techniques.

446  
447 Mr. Field said that the State of New Hampshire would probably be interested in that information and  
448 suggested that she may already have some of the training needed to obtain a Child Care License from  
449 the State.

450  
451 Mr. Field opened the Public Hearing to anyone for or opposed to the Special Exception Application.  
452 Mr. Field closed the Public Hearing without public comment.

453  
454 **Mr. Stanton Moved and Mr. Lagassa seconded the Motion to approve (2) two Special Exceptions**  
455 **under Section 509 – Family Daycare and Section 507 – Home Occupation to use the property located**  
456 **at 12 Lafayette Terrace show as Tax Map 21, Lot 11 as a home occupation for the purpose of a family**  
457 **daycare. The Special Exceptions shall be in the name of the property owner, Seth McAlister solely for**  
458 **his wife Christina McAlister. The Special Exception for Section 507 is based on the ZBA decision that**  
459 **the (5) five criteria have been met. The criteria of Section 509 will have been met when a License has**  
460 **been obtained from the New Hampshire Department of Health and Human Services in accordance**  
461 **with Chapter HE-C4000, Childcare Licensing Rules, RSA 170-E:34. The Applicant Christina McAlister**  
462 **shall have (1) one year to present such License to the Code Enforcement Officer. Both of these Special**  
463 **Exceptions expire when such License as a Family Daycare Provider expires. Mr. Stanton noted that**  
464 **there is a continuing requirement to renew a Childcare License.**

465  
466 The Board determined that the Applicant did not apply for a Special Exception under Section 507 –  
467 Home Occupation, therefore it was not noticed as such. It was also determined that it would be  
468 redundant because there is a specific section within the Ordinance that deals with Family Daycare,

469 Section 509 with the requirement that the Family Daycare will be carried on in the dwelling unit. The  
470 Board decided to eliminate Section 507 from the original Motion.

471  
472 Mr. Stanton was denied his request to receive an opinion from the Code Enforcement Officer on the  
473 matter.

474  
475 **Mr. Legassa withdrew his second to the Motion.**

476  
477 **Mr. Stanton Moved and Mr. Lagassa seconded the Motion to grant the Special Exception under**  
478 **Section 509 – Family Daycare to use the property located at 12 Lafayette Terrace shown as Tax Map**  
479 **21, Lot 11 for the purpose of Family Daycare. This Special Exception shall be in the name of the**  
480 **property owner Seth McAlister, solely for his wife Christina McAlister. The criteria of Section 509 will**  
481 **have been met when a License has been obtained from the New Hampshire Department of Health and**  
482 **Human Services and the Applicant, Ms. Christina McAlister shall have (2) two years to present such**  
483 **License to the Code Enforcement Officer.**

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

485  
486 **2010:10 - First Student, Inc., 600 Vine Street, Suite 1400, Cincinnati, OH 45202. Property location: 25**  
487 **Lafayette Road; M/L 003-087; zoning district I-B/R.** The Applicant requests a Variance from Article IV,  
488 Sections 405.1 and 405.3 to use the property for a bus depot/office/maintenance facility where the use  
489 is not specifically listed as a permitted use nor specifically listed as a prohibited use. Property owner:  
490 Brian J. Thibeault, 300 Gay St., Manchester, NH 03103.

491  
492 In attendance for this application:  
493 Attorney Peter Saari, Casassa & Ryan  
494 Manager and Dispatcher from First Student

495  
496 Mr. Saari presented the case and said that the proposal is fairly simple. He said that the bus depot is  
497 currently 1/8 of a mile down the Road and their lease is to expire at the end of December and they need  
498 to find a new location. Mr. Saari said that the Town of North Hampton's Zoning Ordinances does not  
499 specifically provide for bus depots.

500  
501 Mr. Saari said that they are requesting a Variance from Section 405.1 – Permitted uses, and there is  
502 nothing under that section that allows bus depots. They are also requesting a Variance from Section  
503 405.3 that deals with large scale logistic and distribution facility, which he doesn't believe the bus depot  
504 falls under. He said that one may consider a bus depot falling under "Essential Services", but that's not  
505 how it's defined under the definitions.

506  
507 Ms. Peckham asked how is it that the bus depot is at their current location in North Hampton if the use  
508 is not permitted. Mr. Saari did not know.

509  
510 Mr. Saari said that the bus depot does not fall under Section 405.3 – Large Scale Logistic and Distribution  
511 Facility because the operation is limited to certain hours. The buses will operate the exact same way as  
512 they currently do. Mr. Saari said that the proposed site is attractive to the Bus Depot because the lot is  
513 "deep" putting the buses far away from Lafayette Road and that the site is surrounded by commercial  
514 property and there is nothing but railroad tracks in back of the lot. He said that there are no residential  
515 properties abutting the proposed site.

516

ZBA Meeting Minutes

517 Mr. Stanton asked Mr. Saari for clarification as to what exactly the Applicant is requesting.

518

519 Mr. Saari said that they are asking the Board to find that if it is prohibited under Section 405.3 then to  
520 allow the Applicant to use the proposed site as a Bus Depot in spite of the prohibition of Section 405.3,  
521 and under 405.1 in spite of the fact that there is nothing under Section 405.1 that specifically allows  
522 Depots to allow a Bus Depot.

523

524 Mr. Field called for a recess to allow the Code Enforcement Officer to collect information to determine  
525 how the present operation (First Student) is being conduct at their current location.

526

527 Mr. Field reconvened the Meeting.

528

529 Mr. Mabey read minutes from the April 6, 1999 Planning Board Meeting dealing with Bruce  
530 Transportation and Steve's Auto Repair. The Planning Board determined that there was no "Change of  
531 Use" because the prior business was Mel's Truck Stop.

532

533 Mr. Saari went over the criteria of the Variance test and said that the proposal is in the Public's interest,  
534 and serves the needs of the citizens. He said that the buses at the new site will not be more adverse  
535 than what they are at the current site. He said the Spirit and Intent of the ordinance is to encourage  
536 services to the Community and the proposal falls under that category. He said that he does not know of  
537 anyone gaining anything by not having the buses at the proposed location. He said that it will not  
538 diminish property values because it is surrounded by commercial properties. Mr. Field asked if Mr. Saari  
539 had any evidence that it would not diminish surrounding property value, and he did not. Mr. Field  
540 referred to Section 406.2.2.2 and asked Mr. Saari to explain how the issues within that Section relate to  
541 the bus operation as a matter of the public interest involved in granting the Variance. Mr. Saari said that  
542 there are a lot of cars coming and going when the site was used as car dealership. He said that the  
543 comings and goings of buses will happen once in the morning and once in the afternoon. He said that  
544 buses make noise and give out fumes when they are on the road; not at the site. The buses will be  
545 refueled and maintained at the new location. Mr. Saari said that the public interest hardship criteria  
546 relate to one another and the proposed site is the best site to house the buses; it is over 200-feet off of  
547 Lafayette Road so the school buses won't be an "eyesore" like they are at the current location. The  
548 property location is in the preferred zoning district for a bus depot, and the buses will exit off of Cedar  
549 Road onto Lafayette Road rather than exiting directly onto Lafayette Road like they do at the current  
550 site.

551

552 Mr. Saari said that the buses will not turn east onto Cedar Road, and will not return over the bridge from  
553 Mill Road.

554

555 Mr. Stanton referred to the aquifer map used by North Hampton and it shows that there is an aquifer at  
556 both the current location and proposed location. He said that according to the Stratified Drift Aquifers  
557 Map for North Hampton, the current property is located in an area with less than 1000 transmissivity in  
558 feet squared per day.

559

560 Mr. Saari explained that the 6,000 gallon fuel tank located at the current location will be relocated to  
561 the east side of the building at the proposed site. They will perform maintenance on the buses at the  
562 new location and the hazardous materials will be contained and removed from the site.

563

ZBA Meeting Minutes

564 It was determined that (10) ten of the (37) thirty-seven buses serve North Hampton, (14) fourteen buses  
565 service Hampton and (13) thirteen buses service Seabrook.

566

567 Mr. Buber questioned the ownership of the proposed site. Mr. Saari said that Mr. Thibeault holds the  
568 contract to purchase the property because he was the highest bidder at the auction. He said that he  
569 does not officially own the property, but should gain ownership within a week's time. First Student  
570 proposes to lease the site from Mr. Thibeault.

571

572 Mr. Field opened the Public Hearing to anyone neutral or in opposition of the Application.

573 There was no public comment.

574

575 Mr. Field swore in as witnesses, the Manager and Dispatcher for First Student. They swore that all the  
576 testimony they had given and will give is truthful.

577

578 Mr. Saari explained that the Applicant is before the Planning Board with a Change of Use Application,  
579 and that First Student will not be bound to a long-term lease.

580

581 Mr. Field closed the Public Hearing.

582

583 Mr. Lagassa said that the only criterion of the Variance Test that was questionable by some Members of  
584 the Board was diminution in value. He said that there would not be a change to the neighborhood  
585 because the current bus depot is located right down the road from the proposed site and there are no  
586 residential properties of any kind that would be affected by this approval. Mr. Lagassa said that he  
587 concurred with Mr. Saari that the Public Interest would be served; the Spirit of the Ordinance would be  
588 served by granting this Variance; Substantial Justice would be served and failure to grant the Variance  
589 would be a hardship.

590

591 Mr. Stanton agreed with Mr. Lagassa regarding the value, particularly because they outlined their traffic  
592 pattern not going down Cedar Road. He said that if they grant the Variance he would like certification  
593 that the proposed site sits in one of the two lesser districts of the stratified aquifer district, rather than  
594 the two more sensitive districts. He would also like a mitigation plan for the oils that run off the  
595 pavement into the detention pond.

596

597 Mr. Stanton suggested that the Board authorize the Chair to write a letter to the Planning Board  
598 requesting that they consider (1) the above ground storage containment and (2) a mitigation plan for  
599 any runoff of fuels and oils from the buses.

600

601 Mr. Buber said he agreed with Mr. Saari that the use is not prohibited or permitted. Mr. Buber referred  
602 to the definition section of the Ordinance under Essential Services and read the last sentence into the  
603 record: *or for the public safety or general welfare*. He said that providing bus service to bring the  
604 children to school may not fall under the legal definition of "Essential Service" but it seems to be an  
605 essential service that would provide getting the children to school safely, and protect their welfare. He  
606 said that it is a necessary part of the community to provide school bus transportation.

607

608 Mr. Field said that if the Board considered the bus service to fall under the definition of "Essential  
609 Service" and because it is permitted in the I-B/R district the Board could report to the Planning Board  
610 that the Zoning Board found it to be a permitted use and take no other action.

611

ZBA Meeting Minutes

612 Ms. Peckham said that she agreed that Mr. Saari proved that the Application meets all 5 criteria of the  
613 Variance Test.

614

615 Mr. Field said that he thought that “Essential Services” primarily relates to utilities and municipal  
616 government services, and does not agree that the proposed Application falls under one of those  
617 categories. He said that he is concerned with changing a site from selling automobiles to a heavy  
618 industrial use with the maintenance and refueling and cleaning of tools that is associated with a bus  
619 depot. He said given the drainage issues and aquifer issues in that part of Town he is concerned as to  
620 whether it is in the public’s interest to expose the water supply to a much more intense use of  
621 maintaining and depoting buses in the facility.

622

623 Mr. Lagassa said that the Planning Board will impose rigid conditions when the Applicant goes before  
624 them with their Change of Use Application. He said that he was on the Planning Board when Mitsubishi  
625 applied for a Site Plan and a lot of time was spent making sure that the drainage of oils from the  
626 automobiles did not impinge on water quality. He said that it would be easier to control at the  
627 proposed site than the current site where there is no pavement.

628

629 Ms. Peckham agreed and said the proposed site is probably 96% geared to accept the buses.

630

631 **Mr. Stanton Moved and Mr. Lagassa seconded the Motion to grant a Variance to Section 405.1 as a**  
632 **permitted use in the I-B/R district at property located at 25 Lafayette Road, shown as Tax Map 3, Lot**  
633 **87 as a bus depot/office/maintenance facility.**

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

635

636 Mr. Field reminded the Applicant of the 30-day appeal period.

637

638 Mr. Field noted for the record that he opposed the granting of the Variance because he is concerned of  
639 the environmental implications in being a more intensive use.

640

641 **Mr. Stanton Moved and Mr. Buber seconded the Motion that the Board direct Mr. Field, as Chair, to**  
642 **contact the Planning Board of the Zoning Board’s concerns for case #2010:11 – First Student. (1) the**  
643 **above ground storage tank, (2)the mitigation of any oils and solvents from the site, and (3) to look at**  
644 **the aquifer issues on the site.**

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

646

647 Mr. Stanton reminded Mr. Field that First Student has an Application before the Planning Board on  
648 Thursday, December 2, 2010.

649

650 **Other Business**

651

652 **Communication/correspondence and miscellaneous** – The Board was in receipt of the ZBA  
653 Meeting Schedule/Application deadline date for 2011. The Board discussed a date to hold the  
654 December 2011 Meeting. The Board decided to hold the December Meeting on December 13, 2011  
655 with an Application deadline date of November 18, 2011, and to add an asterisk with a note “subject to  
656 change”.

657

658 **Mr. Buber Moved and Mr. Lagassa seconded the Motion to approve the 2011 Zoning Board Meeting**  
659 **Schedule and Application deadline submittal date presented by Ms. Chase with the December**  
660 **Meeting to be held on December 13, 2011 with an Application submittal deadline date of November**  
661 **18, 2011, subject to change.**

662 **The vote was unanimous in favor of the Motion (5-0).**  
663

664 **Review proposed FY2012 budget** – Mr. Field had communications with Mr. Fournier and  
665 requested a list of revenues for the ZBA. The receipts for the year 6/30/2009 – 7/1/2010 was \$3,459.00;  
666 receipts from 7/1/2008 - 6/30/2009 were \$2,743.00; the receipts from 7/1/2006 - 6/30/2007 were  
667 \$4,240.00.  
668

669 The Board asked that their concerns be forwarded to Mr. Fournier.

- 670 • A budget line for training for the ZBA members including lodging, meals and transportation
- 671 costs
- 672 • A budget line for legal matters; access to independent legal counsel for the Board
- 673

674 Mr. Field commented on the proposed Administrative Services contract. He said that the Board has the  
675 statutory authority to charge the Applicants sufficient monies to cover the Board's operating expenses  
676 including clerical and administrative. He said that the Planning Board is going through the same issues  
677 with what an individual entity in Town does when they have these statutory responsibilities to the  
678 public. Mr. Field distributed to each Member a draft of the Administrative Services Agreement that  
679 consists of an effort with input from Town Administrator Steve Fournier and Phil Wilson, Chair of the  
680 Planning Board to put ideas on the table as to what type of relationship that might be. He asked the  
681 Members to review it and email any comments that they may have. They will then sit down with the  
682 Town Administrator and listen to his comments/suggestions and to also discuss the budgeting process at  
683 that time.  
684

685 Mr. Stanton requested that when Mr. Field e-mails correspondence to the Board to not include the logo  
686 of his law practice that includes a stipulation on confidentiality.  
687

688 Mr. Field said that he did not know how to remove it and will continue to use the e-mail address that is  
689 available to him.  
690

691 **Code of Ethics Report from Mr. Lagassa** – Mr. Lagassa said that the Code of Ethics Ad hoc Committee  
692 met on November 3, 2010 and he presented a first draft of a Preamble, a Statement of Purpose and a  
693 Code of Ethics. He said that they have not yet prepared an enforcement section to determine the way  
694 in which any potential Code of Ethics violation that can be brought forth as indictments or prosecuted is  
695 to be handled. He said that one Member suggested in addition to having a Code of Ethics that they  
696 need some sort of affirmative statement of values. He said they will discuss that topic at the next  
697 meeting (December 2, 2010 at 2:00pm) as well as peruse forms of enforcement.  
698

699 Mr. Field asked Mr. Lagassa to e-mail a draft copy of the Code of Ethics to each Member of the Board.  
700 Mr. Lagassa said that he would rather wait to have a completed draft before circulating it to the  
701 Members.  
702

703 Mr. Field voiced concerns and asked Mr. Lagassa to convey them to the Code of Ethics Ad hoc  
704 Committee at their next Meeting. His first concern is if a Member sitting on a Land Use Board runs for

705 Office other than a Board in which he/she is serving may be influenced by desires to appeal to their  
706 constituents and there should be a section in the Code that deals with Board Members sitting on cases  
707 involving the public while running for another Office. He also questioned whether or not there is a  
708 distinction made between elected officials and appointed officials within the code, and if a person would  
709 be barred from running for any Office if they disagreed with the Code of Ethics adopted by the Town.  
710

711 Mr. Lagassa said that it would be more appropriate to raise concerns regarding the Code of Ethics once  
712 the draft is complete to better “pin point” the section Mr. Field may object to.  
713

714 Mr. Field said that he would like to know if Elected Officials and Appointed Officials and hired employees  
715 will be treated the same in the Code of Ethics. Mr. Lagassa said that hired employees are covered by  
716 personnel policies. He said the Committee will adopt a Code of Ethics that applies to everyone including  
717 hired employees, but the enforcement issues will have to go through certain channels such as contracts  
718 and labor negotiations administered by the Town Administrator.  
719

720 **Mr. Stanton Moved and Ms. Peckham seconded the Motion to adjourn at 10:20pm.**  
721 **The vote was unanimous in favor of the Motion (5-0).**  
722

723 Respectfully submitted,

724  
725 Wendy V. Chase  
726 Recording Secretary  
727  
728