



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, April 26, 2011 at 6:30pm
Town Hall**

6

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; Richard Stanton, David Buber, and George Lagassa

Members absent: Michele Peckham

Alternates present: Dennis Williams and Phelps Fullerton

Staff present: Wendy Chase, Recording Secretary

I. Call to order; Pledge of Allegiance; Roll call/Introduction of Members/Alternates; Recording Secretary Report; Swearing in of Witnesses; Preliminary Matters; Minutes of previous Meeting – March 9, 2011 and March 22, 2011

Mr. Field convened the Meeting at 6:30pm, and introduced the Members/Alternates of the Board that were present.

Mr. Williams was seated for Ms. Peckham to continue on Case #2011:01 – Deborah S. Schreck, 140 Mill Road.

Mr. Field invited those in attendance to join him in the Pledge of Allegiance.

Ms. Chase reported that the April 26, 2011 ZBA Agenda was posted on April 8, 2011 at the Library, Town Office, Town Clerk's Office and on the Town's website, www.northhampton-nh.gov.

Mr. Field went over the Board's procedures.

March 9, 2011 Meeting Minutes – Mr. Field tabled the March 9, 2011 Meeting Minutes to the next Meeting that Ms. Peckham would be in attendance because she Chaired that Meeting.

March 22, 2011 Meeting Minutes – Mr. Field, Mr. Lagassa and Mr. Buber made typographical, non-substantive changes to the Minutes. Mr. Buber requested that, the changes he offered and typed out for the January 25, 2011 Minutes, be added to the March 22, 2011 Minutes as an Addendum.

Mr. Field noted for the record, in regards to the discussion on the “Services Agreement” at the March 22, 2011 Meeting, “It is my belief that if the Town has adopted a Zoning Ordinance it is incumbent upon the Select Board to appropriate sufficient funds to manage and enforce and administer the Ordinance in order to alert the Select Board if enforcement is deemed necessary”. *Secretary’s note: Mr. Field stated, at the May 24, 2011, if and when the Select Board receives a report from the Enforcement Officer that it then has the capacity to alert the Select Board if the formal enforcement action is deemed necessary”.*

Mr. Lagassa Moved and Mr. Stanton seconded the Motion to adopt the March 22, 2011 Meeting Minutes as amended and to include Mr. Buber’s suggested changes as an Addendum.
The vote was unanimous in favor of the Motion (5-0).

II. Unfinished Business

1. 2011:01 – Deborah S. Schreck, P.O. Box 678, Rye Beach, NH 03871. Property location: 140 Mill Road; M/L 012-046-000; zoning district R-2. The Applicant requests a Variance from Article IV, Section 406 for relief from the front yard setback to allow the construction of a house 25-feet from the front property line where 35-feet is required. Property owner: Deborah S. Schreck, Trustee of Deborah S. Schreck Revocable Trust/1999. This case is continued, at the request of the Applicant, from the March 22, 2011 Meeting, in order to respond to Board requests for additional information.

In attendance for this application:
Craig Schreck, Applicant

Mr. Field thanked Mr. and Mrs. Schreck for the additional submissions and further inquired if he had distributed the new proposed plans to the Abutters to the property prior to the Meeting as he indicated he would do last month. Mr. Schreck said during the Meeting that when he got the new plan he would distribute them to the Abutters and his response was, he said that he had done so.

Mr. Buber called for a Point of Order to ask that the Chair swear in witnesses.

Mr. Field swore in witnesses.

Mr. Schreck submitted E-mail communications from Abutters in support of his variance request to the Board. He also submitted a more detailed plot plan of his proposal, stamped by the Architect.

Mr. Field explained that the Board does not normally take E-mails into evidence as conclusive statements if they are not signed by the author, which they were not. But he said that the Board will read them as part of the deliberation and consider their evidentiary weight.

Mr. Schreck said that he was asked by the Board, at the March 22, 2011 Meeting, to submit a rendering of the proposed house and a depiction of the “footprint” shown within the new building envelope. He had his Engineer prepare the Site Plan, and stamp and sign it. He added that once the construction begins he will have the Engineer “pin” all the corners and then get a certified plot Plan from him.

Mr. Schreck reiterated from the last Meeting that he is asking for relief from the 35-foot front setback, and if approved the house would be 45-feet from the paved portion of the road. He plans to build a house that would fit in with the character of Mill Road and the Community. He said that he has approval from NH DES of a 4-bedroom septic system.

Mr. Buber asked for clarification on the delineated site plan. He said that the 50-foot wetlands setback line does not continue to the property line. Mr. Schreck referred to the larger plan that showed the line's direction. Mr. Field asked Mr. Schreck to "pen" the line on the stamped copy of the plan included in the permanent file, and to sign and date it for the record.

Mr. Buber asked how far away the corner of the septic was from the property line. Mr. Schreck said that it is approximately 20-feet away from property line.

Mr. Schreck said that the Engineer stamped the plan certifying that the septic meets the Town's Zoning Regulations.

Mr. Field opened the Public Hearing to anyone in favor of the proposal. There was no public comment in favor.

Mr. Field opened the Public Hearing to anyone either against or neutral to the proposal, or who would like to bring new information regarding the proposal to the attention of the Board Members.

Richard Skowronski, 142 Mill Road - questioned why the Applicants couldn't just build a smaller house to fit on the very limited lot. Mr. Field said that the Applicants are allowed to attempt to build what they want, and if the proposal is not in compliance with the Zoning Ordinance they have the right to seek relief from the ZBA.

Mr. Skowronski asked, and the Board confirmed, that the lot in question is a "developed" lot. Mr. Skowronski referred the Board to Article IV, Section 409.9.B – Developed lots of record. He quoted text under provision 409.9.B.2, "the construction of additions to and/or extensions of existing buildings or structures shall be permitted..." He said the Applicants already razed the building and asked if the Applicant is even allowed to build a new house because it would not be an addition or an extension of any building. Mr. Skowronski said he was not prepared to ask such questions at the last Meeting because no one was in receipt of an accurate and correct plan at that time.

Mr. Stanton read a portion of Section 409.9.B.1 – *Developed lots of record existing prior to March 2003; if the imposition of 100-feet of Tidal Lands and/or inland wetland buffer setbacks causes the buildable upland acreage to be less than 16,000 square feet, the prior buffer zone setback of 50' shall apply.* Mr. Stanton explained that the Applicant meets the Ordinance under Section 409.9 because the new building is within the 50-foot setback which he qualifies for because his upland area is less than 16,000 square-feet.

It was determined by the Board that the proposal meets the criteria under Section 409.9; therefore relief from that Section is not necessary, and because the Applicant qualifies under Section 409.9.B.1, the issues raised under 409.9.B.2 are not applicable.

Mr. Skowronski said that his primary concern is the road "runoff" in that area because the ground slopes downward off the road toward the wetlands, which are primarily on his property. He said if the Board

grants the Applicant the requested relief it would remove 10-feet of buffer area that normally filters out the contaminants of the road “runoff”, and there will be added “runoff” from the new construction on the lot. He commented that the Applicant knew the limitations prior to purchasing the property and fails to see where there is undue hardship.

Mr. Field said there is New Hampshire Case Law that says that a person is not barred from seeking relief from the ZBA even though they knew there were zoning limitations on the property before purchasing it. It is also not considered “self-imposed hardship” under Case Law.

Joseph Weglowski, 138 Mill Road – asked if the Applicant was required to obtain any other State or Town approvals. Mr. Field said that the ZBA is tasked with the Variance request and does not determine what other permits that may be required. He said that anyone directly affected by a ZBA decision has the right to request a rehearing within 30 days. He said this appeal period does not bar the Applicants from beginning construction, but they do it at their own risk.

Mr. Stanton said that in this case it is up to the Building Inspector/Code Enforcement Officer to annotate what is required of the Applicant to construct the new house.

Mr. Field commented that the Building Permit process gives little information, and Abutters need to be diligent and check with the Building Inspector, who issues the permits, because there is a 30-day appeal period for issued Building Permits. He said that the ZBA does not issue building permits nor approved building plans, but the Board does have a legitimate interest in determining whether or not a particular design would cause a diminution in value of surrounding properties.

Mr. Weglowski said that he likes the Plan and the proposed building, and as long as the house is built within the setbacks he doesn’t have objection to the proposal.

Mr. Field read the two (2) E-mail communications received from Abutters in support of the proposal into the record:

Lawrence and Elaine Stuesser, 147 Mill Road – *“Thank you for providing us with copies of the drawings and site plans for your new home to be constructed at 140 Mill Road. This will be a very attractive home and be a great addition to our neighborhood. We are in favor of the variance on the front road setback that you are requesting from the North Hampton Zoning Board and encourage the Board to approve it. As neighbors living directly across the street we do not feel that your approved request would have any negatives to it. Welcome to the neighborhood”.*

Virginia McCann, 130 Mill Road – *“I am in favor of the variance you are requesting. I think the house looks great and in keeping with the neighborhood. We are very happy to have you as neighbors. Look forward to seeing you soon”.*

Mr. Schreck plans to remove the current circular driveway and replace it with a “single-cut” paved driveway, and in his opinion, it would not increase the impervious surface area; it could potentially be decreased.

Mr. Field asked if Mr. Schreck would be agreeable to a condition that the driveway be constructed of pervious material. Mr. Schreck said that he would have to look at the material first before deciding.

There being no further comments to be received from either Abutters or the Applicant, Mr. Field closed the Public portion of the Hearing.

Mr. Williams asked if Mr. Skowronski would be more agreeable to the proposal if Mr. Schreck used "pervious material" for his proposed driveway.

Mr. Field said the notion of less impervious surface area allows for more absorption, but if the house is moved 10-feet closer to the road, changing the location of the house, it then redirects the water "runoff path".

Mr. Buber said he considers himself a wetlands advocate, but the Zoning Ordinance states that impervious surfaces are not allowed within 50-feet of the wetlands; therefore Mr. Schreck is allowed to use impervious material up to the 50-feet setback.

Mr. Lagassa said that he agreed with Mr. Schreck's arguments that he made at the last meeting that he meets the five (5) criteria of the variance test. He said that he does not think the Board should impose the additional requirement that the driveway has to be constructed with pervious material.

Mr. Stanton agreed with Mr. Lagassa and would not recommend imposing the condition that the driveway be constructed of pervious material. He said that the dwelling would be approximately 80-feet away from the wetlands.

Mr. Buber agreed with Mr. Stanton and Mr. Lagassa and does not believe the Board should make it a condition, if approved, that the driveway be constructed of pervious material. He commented that if the Decision Letter is not specific enough there is great latitude of how the home is constructed. He suggested that if the Board grants the variance that they include in the Decision Letter the condition that the house be constructed in accordance with the elevation and Site Plan(s) as distributed by Mr. Schreck this evening.

Mr. Stanton said that, in his experience with building his own home, there are sometimes slight modifications that need to be made during construction, and if the conditions in the decision letter are too restrictive, the Applicant would need to come back before the Board for approval with any small change to the exterior of the building. He suggested that the condition be worded in a way that would allow small modifications to the exterior of the building without having to come back to the ZBA for approval.

Mr. Buber disagreed and said the house should conform to the front elevation and site plan that Mr. Schreck submitted to the Board this evening.

Mr. Field suggested they add into the Decision Letter, that if the change to the Plan is neither substantial nor material, the Applicant would not have to come back to the ZBA for approval, but if there is a change to the roof line or exterior siding then that would be considered a material change and would need ZBA approval to determine whether or not it would still be consistent with the character of the neighborhood. He said this would eliminate the need for the Applicant to come back before the Board with every little "nail change".

Mr. Lagassa said that, in his opinion, it's not within the purview of the ZBA to impose architectural standards on a variance request to build within a particular building envelope. He said imposing detailed standards on the architectural appearance of the house exceeds the Zoning Board's authority.

Mr. Field said that the Abutters have the right to come before the Board and question whether or not the proposal will "diminish surrounding property values". He said that, in his opinion, it is an important inquiry for the Board to make under the standards.

Mr. Buber Moved and Mr. Williams seconded the Motion that the variance request for Case #2011:01 be approved, pending that, agreed in the Decision Letter it is specified that the house elevation and site plan presented tonight be incorporated or referenced in the Decision Letter, and that the Plans may not change in any "substantial and material way" without further ZBA review. The vote was unanimous in favor of the Motion (5-0).

Mr. Field reminded Mr. Schreck and the Abutters of the 30-day Appeal period and noted for the record that Mr. Schreck and his wife were quite responsive to the Board's requests, which made the process more manageable and thanked them for their effort.

III. New Business

There was no new business before the Board.

IV. Other Business

1. "Code of Ethics" - Committee Report – Mr. Lagassa –

Mr. Lagassa reported that the Code of Ethics Ad hoc Committee met on April 20, 2011 and they discussed the legality of the Code of Ethics and the lack of detail in the enforcement provisions in the Code. The draft was sent to the Town's Attorney from Upton and Hatfield for review. The Committee reviewed the Attorney's responses, and changes were made to the Code of Ethics to incorporate his responses. One of the Members of the Committee is rewriting the enforcement section and once complete the Committee will review it and continue forward with the Public Hearing process. Mr. Lagassa said that the Attorney thought there was extra wordiness in the document. He said that the Attorney's suggested changes were more style than substance and that he added reference to RSA 31:30-a, the Statutory Authority governing the Code of Ethics.

2. Communications/Correspondence and Miscellaneous

Mr. Field commented that the Town received notice from Attorney Pelech that the Horne Case #2010:02 is being appealed and the Orders of Notice was issued to the Town on April 8, 2011.

Mr. Field commented on the Office of Energy and Planning Conference scheduled for June 11, 2011 and encouraged Members to attend. He suggested that any Member wishing to attend to coordinate with Ms. Chase. Mr. Stanton remarked that he had attended the conferences in the past and they are excellent.

3. "Administrative Services Agreement" – Status Report – Continuing Board Discussion re: "Sixth" (6th) Draft of "Administrative Services Agreement"

Mr. Field said that he attended the Select Board Meeting last night and presented the Administrative Services Agreement in draft form to the Board. It was decided that nothing could be done under the limitations of time within this Electoral Cycle. It was in his opinion that the Select Board Members, except, possibly Mr. Wollmar who was more reserved than the others, felt that it would be helpful to have an Administrative Services Agreement. Mr. Fournier is in favor of the "Agreement" for protection of the Staff; Mr. Field sees it as protection of the ZBA, and the Select Board, sees it as protection for them and their Employees. Mr. Stanton and Mr. Buber were also at the Select Board Meeting and agreed with Mr. Field's synopsis.

**Mr. Buber Moved and Mr. Stanton seconded the Motion to adjourn the Meeting at 8:14pm.
The vote was unanimous in favor of the Motion (5-0).**

Respectfully submitted,

Wendy V, Chase
Recording Secretary

Approved May 24, 2011 with amendments