



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

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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.**

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11 **Attendance**

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13 **Members present:** Robert B. Field, Jr., Chair; Michele Peckham, Vice Chair; David Buber, George
14 Lagassa, and Phelps Fullerton.

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16 **Members absent:** None.

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18 **Alternates present:** Dennis Williams, Robert Landman and Lisa Wilson.

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20 **Staff present:** Wendy Chase, Recording Secretary.

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

24
25 **I. Call to order; Pledge of Allegiance; Roll call/Introduction of**
26 **Members/Alternates; Recording Secretary Report; Swearing in of Witnesses;**
27 **Preliminary Matters; Minutes of previous Meeting – June 28, 2011.**

28
29 Mr. Field called the Meeting to Order at 6:30pm.

30
31 Pledge of Allegiance -Mr. Field invited the Board Members and those in attendance to rise for a Pledge
32 of Allegiance and noted that reciting the Pledge of Allegiance is for those who choose to do so and has
33 no bearing on the decision making of the Board or the rights of an individual to appear before, and
34 request relief from, the Board.

35
36 Introduction of Members and Alternates -Mr. Field introduced Members of the Board and
37 acknowledged the Alternate Members present (stated above).

38
39 Recording Secretary Report -Ms. Chase reported that the July 26, 2011 Agenda was properly posted on
40 July 8, 2011 at the Library, Town Clerk's Office, Town Office and the Town's website. It was also posted
41 in the July 12, 2011 edition of the Portsmouth Herald.
42

43 Mr. Field reminded the Board to be cognizant of the “On Air” sign located above the door of the
44 recording studio. He was informed by Channel 22 Producer John Savastano that when the light remains
45 on it means recording is in session, and all conversations, official or otherwise, are being recorded
46 and/or perhaps, broadcast. Mr. Savastano was asked to “blink the light” to attract Members’ attention
47 when the system was being turned off. Members were asked to be aware that there might be a “delay
48 time” between “on air” status and shut down. Member Buber indicated his appreciation for both the
49 warning and sensitivity to the issue, and noted that at the previous meeting of the Board there was at
50 least one instance when the “on air” light seemed to extend forward during a recess.

51

52 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Field swore in all those who were
53 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
54 Case or matter to be heard.

55

56 Rules and Procedures – Chair Field explained the Board’s operating Rules and Procedures and
57 emphasized those Rules relating to the “Public Hearing” portion of the Meeting vice the “Public
58 Meeting”. He explained that once the Board closes the “Public Hearing” on a Case before them, there is
59 generally no longer an opportunity for additional public comment unless the Board acts sua sponte to
60 re-open the Public Hearing for what they believe to be pertinent and important new information or
61 facts. He pointed out that as a matter of “fairness” to all interested parties, timely closure of a matter is
62 the desired goal.

63

64 **Meeting Minutes (draft) – June 28, 2011.**

65

66 The Board reviewed the June 28, 2011 “draft” Minutes, as previously revised by the Chair, and offered
67 minor typographical corrections. The Board indicated, once again, its appreciation for the new process.

68

69 **Mr. Buber Moved and Mr. Fullerton Seconded the Motion to Approve the “draft” June 28, 2011**
70 **Meeting Minutes, as amended.**

71

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

73

74 **II. Unfinished Business**

75 **1. #2011:04 – John Normand, 75 South Road, North Hampton, NH. Property location: 75**
76 **South Road, North Hampton; M/L 008-109-000; zoning district R-1.** The Applicant requests a
77 Special Exception under Article V, Section 513 – Accessory Apartment to allow a one (1)
78 bedroom accessory apartment above the existing attached garage. Property owner: John
79 Normand, 75 South Road, North Hampton, NH. This case is continued from the June 28, 2011
80 Meeting to allow the Applicant to provide additional information requested from the Board.

81

82 In attendance for this application:
83 John Normand, owner/applicant

84

85 Case #2011:04 – John Normand, 75 South Road was continued from the June 28, 2011 Meeting to allow
86 the Applicant to provide additional information requested/suggested from/by the Board.

87

88 Mr. Normand submitted the following additional information:

89

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- 90 • A copy of a map depicting conservation land and very poorly drained soils in the portion of Town
91 his lot is located
- 92 • Hand sketched drawing of the buildings on the lot, the location of the leach field, and the
93 location of the test pit that was dug on the lot
- 94 • Hand sketched drawing of the garage depicting where the proposed window would be located
95 for the Apartment
- 96 • Hand sketched floor plan of the proposed apartment
- 97 • A copy of an old Tax Card showing the house, breezeway and garage and year built; 1978
- 98 • An aerial photo of the property
- 99 • Copy of the test pit results performed by Michael Cuomo, Rockingham County
100 Conservation District

101
102 Mr. Normand explained that the septic system is designed for a four 4-bedroom house. They currently
103 have two (2) adults living in the house, and if the apartment is approved, they will have an additional
104 one (1) or two (2) people living at the residence. He also stated that he has the septic system pumped
105 out every two (2) years.

106
107 Mr. Normand explained that the proposed apartment would include one (1) additional bedroom. Ms.
108 Peckham said that a Special Exception runs with the land and, if the Special Exception is granted, and the
109 property changed ownership to a larger family, then the septic may not be adequate. She asked Mr.
110 Normand if he would be agreeable to a condition that the capacity shall remain the same, and if the
111 number of people living there exceeds eight (8), then they would need to put in the expanded septic
112 system. Mr. Normand said that he would be agreeable to that condition.

113
114 Mr. Normand stated that he had been advised by Mr. Cuomo, from the Rockingham Planning
115 Commission, that some towns allow the Applicants to proceed with their projects as long as they have a
116 septic design in place in the event of septic failure.

117
118 Mr. Field commented that Special Exceptions are approved uses when they meet all of the conditions.
119 He referred to the condition under Section 513.7: *The owner shall provide evidence to the Building
120 Inspector that septic facilities are adequate for both units according to the standards of the Town and
121 the N.H. Water Supply and Pollution Control Division. If deemed necessary by the Building Inspector,
122 such evidence shall be in the form of certification by a State of N.H. licensed septic system designer. The
123 Building Inspector shall indicate his approval in writing to the Zoning Board of Adjustment.* He explained
124 that the Board is not authorized to waive any of the criteria. He also pointed out that in the letter to the
125 Board from the Septic System Designer; Anne Bialobrzkeski, she indicates that a bigger system would be
126 appropriate.

127
128 Ms. Peckham suggested recessing the Meeting so that she could get the file from the Town Office to see
129 if the current septic plan was there to review.

130
131 Mr. Field recessed the Meeting so that Ms. Peckham and Ms. Chase could retrieve the file next door.
132 Mr. Field reopened the Meeting.

133
134 The septic plan in the file is a stamped copy designed for a four (4) bedroom house with a 1,000 gallon
135 tank.

136

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137 Ms. Peckham referred to the letter from the Septic Designer, Ann Bialobrzkeski that states the site
138 loading for the existing four (4) bedroom house (600 gallons per day) would increase by 225 gallons per
139 day with the addition of the proposed one (1) bedroom apartment for a total daily design flow of 825
140 gallons per day. She questioned whether or not the 1,000 gallon tank would be adequate for both the
141 existing house with the proposed apartment.
142

143 Mr. Field questioned whether or not Mr. Normand evidence demonstrated compliance with criterion
144 Section 513.7 of the Ordinance, and asked if he had received a "letter" from the Building Inspector
145 indicating his approval and determination that the existing septic facilities are adequate to serve the
146 proposed expansion.
147

148 Mr. Normand explained that the Building Inspector did visit the site, and verbally told him it was
149 adequate, but did not give him a letter to that effect. He said that if there is a question to the size of the
150 tank, he could have the Septic Designer come back and dig up the earth and verify that it is a 1,000
151 gallon tank.
152

153 Mr. Field commented that a "Special Exception" can only be granted by the Board if all of the conditions
154 of the Ordinance are met. It is a strict standard that the Supreme Court has set.
155

156 Mr. Fullerton was asked by Mr. Lagassa for his opinion on the adequacy of a septic system. Mr.
157 Fullerton said that, although he did not view himself as an expert, it was his understanding that NH DES
158 requires a 1,000 gallon tank for a four (4) bedroom residence and every bedroom added onto that is an
159 additional 250 gallon capacity. He said the Board Members should not confuse the "loading gallons"
160 with the "capacity of the tank"; they are two different measurements. He said there are other
161 additional sub surface regulations, for example, the installation of a garbage disposal would require
162 expanding the capacity another 250 gallons. He also stated that the leach field is not always located
163 exactly where it is depicted on the septic plan. The "rule of thumb" is that the alternative location of the
164 leach field cannot be any further away than the actual size of the leach field.
165

166 Mr. Normand was given the option to either request a "continuance of his Case" for the purpose of
167 dealing with the "septic" capacity issues raised by the Board, or to let the Board deliberate and take
168 action.
169

170 Mr. Field explained that the "use" is approved within the Zoning District as a Special Exception", subject
171 to the project's meeting the eight (8) statutory conditions, and if they are not all met, the Board may
172 determine by a vote adversely to what Mr. Normand wants to do.
173

174 Mr. Buber referred to the letter from the Septic Designer, and quoted, "I can assure the Board that a
175 septic system can be designed to accommodate the proposed expansion of use in compliance with
176 current regulations". Based on the evidence submitted, Mr. Buber was not sure that the septic system is
177 adequate to support both the four (4) bedroom house and the proposed accessory apartment. Mr.
178 Buber said that the "burden of proof" lies with the Applicant, and Mr. Normand would have to satisfy
179 the criteria that the existing septic system is adequate for both the four (4) bedroom house and
180 proposed apartment.
181

182 Mr. Normand referred to the certified and stamped (by a licensed septic designer) septic plan in his file,
183 and asked what other "proof" would be necessary beyond that. The Chair advised him to carefully

184 review the provisions of Section 513.7 of the Ordinance, and come to his own independent conclusion
185 as to its intent and meaning.

186
187 Mr. Normand requested a continuance of his Case to the August 23, 2011 Meeting. He asked the Board
188 to clarify what exactly he needed to submit as evidence at the next Meeting and in what "form" it
189 needed to be in.

190
191 Chair Field said that, in his personal opinion, the Building Inspector would seem to need a letter from
192 Stockton Services certifying that the existing "septic system" is adequate to support the current
193 residence and proposed addition, and, if Mr. Mabey agrees with Stockton Services, he will then indicate
194 such approval in writing addressed to, and suitable for presentation by Mr. Normand to the Zoning
195 Board. By Ordinance, the Board needs a letter from the Building Inspector if a "new" system is to be
196 waived.

197
198 The entire Board agreed to continue Case #2011:04 to the August 23, 2011 Meeting. (The Public Hearing
199 is open).

200

201 **III. New Business**

202 **1. #2011:05 – Robert McGrath, 107 Alehson Street, Rye, NH 03870. Property location: 122**
203 **Lafayette Road, North Hampton; M/L 017-004-000; zoning district I-B/R.** The Applicant
204 requests Variances from Article IV, Section 406.5 to allow a conversion of one (1) commercial
205 unit into one (1) residential apartment and Article IV, Section 408 – Building Area for Dwelling
206 Units to allow the proposed apartment a living space of 500 square-feet where 720 square-feet
207 of living space is required. Property Owner: Atlantic Rt. 1, LLC, 107 Alehson Street, Rye, NH
208 03870.

209

210 In attendance for this application:
211 Robert McGrath, owner/applicant

212

213 Mr. McGrath presented his case before the Board, and began with his Variance request from Section
214 408 to allow a living space of less than 720 square feet.

215

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

217

218 Mr. McGrath said that turning the commercial space, which has been vacant for over a year, into an
219 apartment would fill the need/desire for affordable housing in North Hampton. He said that he does
220 careful tenant screening and he practices self-responsible management of the property.

221

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

223

224 He said that many local residents that grew up in North Hampton don't have an opportunity to live here
225 because they can't purchase a property due to current "market" conditions. This would allow people
226 the chance to live in a Town they wish to live in.

227

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

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230 He said that at this point in the economy it's the right thing to do, and it will relieve a commercial
231 vacancy that's in competition with many vacant commercial properties in North Hampton.

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

He said that the surrounding property values would not be diminished because he would be taking away a market contender in the commercial space which will enhance the values of the other vacant commercial properties.

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

He said that the property is unique because it houses both commercial and residential uses. There is a balance that needs to be in place and it reduces the “pool” of possible commercial businesses that can co-exist with residential property. He said that three (3) businesses in there now work well with the residential uses.

The Board discussed the size of the unit and how small the space is. The criterion under “accessory apartments”, Section 513.5 was referenced. It allows the size of such apartment to be between 400 and 800 square feet.

Chair Field asked the Applicant to articulate those circumstances which make this space uniquely different from any other 500 square-foot vacant “commercial” space along the United States Route 1 corridor.

Mr. McGrath said that the space is set out back with a gravel driveway making it undesirable to businesses that would like to be visible from the road and to have a paved driveway area.

Mr. Field invited anyone in the audience to speak in favor of the proposal. There was no public comment.

Mr. Field invited anyone in the audience to speak against the proposal or wished to make any kind of comment on the proposal. There was no member of the public present wishing to offer public comment.

Chair Field then closed the Public Hearing.

The Board then deliberated on the request.

Mr. Fullerton said that he cannot see “unnecessary hardship” in the Applicant’s request for relief from Section 408 to allow for a 500 square foot living space where the ordinance requires 720 square feet. He said that “unnecessary hardship” means, *owing to special conditions of the property that distinguish it from other properties in the area*. He said that he did not think it could be argued, that because the space is only 500 square-feet it doesn’t serve a commercial use well, when the Applicant testified that there are commercial spaces as small as 100 square-feet in the area.

Mr. Buber agreed with Mr. Fullerton. He said he could not see the “hardship” test being met. He said “hardship” is not just a “financial hardship”; it has other burdens that go along with that test, and he doesn’t believe that real estate market conditions should influence zoning regulations.

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279 Mr. Lagassa agreed with Mr. Fullerton and Mr. Buber that the fifth test on “hardship” has not been met
280 and he would find it difficult to vote in the affirmative.

281
282 Ms. Peckham said that she does not see that it meets the standard under either section “a” or “b” of the
283 “unnecessary hardship” standard. She said that it also does not meet the “spirit of the ordinance” test.

284
285 Chair Field said that he had nothing to add to what his colleagues stated.

286
287 **Mr. Buber Moved and Ms. Peckham seconded the Motion that the Variance request for Case #2011:05**
288 **be denied for failure to support points three (3) and five (5) of the variance criteria.**

289 **The vote was unanimous in favor of the Motion (5-0).** *Secretary’s note: the Spirit of the Ordinance*
290 *criteria is point # two (2).*

291
292 Mr. Field explained to Mr. McGrath the Thirty (30) days appeal period to Request a Rehearing.

293
294 **Other Business**

295
296 Resignation of Alternate (Term Ending May 2012) - The Board was in receipt of a signed Resignation
297 from Alternate Member, Jennifer Lerner, dated July 12, 2011. Ms. Lerner stated in her letter that she
298 no longer has the time to commit as an Alternate Member to the Board because of personal reasons.
299 Chair Field spoke on behalf of the Board in thanking Ms. Lerner for her years of service to the Board and
300 to the Town and in wishing her well.

301
302 Mr. Field said that he would like to Table the matter of filling her vacancy to another time, unless any
303 Member feels that the Board needs more than the four (4) Alternates who will continue in service.
304 There was no objection from the Board.

305
306 Ethics Committee Report - Mr. Lagassa reported that the Code of Ethics Committee met today. Ms.
307 Laurel Pohl is the new representative from the Planning Board and Mr. Wilson has replaced Mr.
308 Maggiore as the Selectmen’s Representative. He said that Mr. Bob Hamilton, Representative from the
309 Budget Committee and Mr. Fournier were also present. He said that the consequences of the Meeting
310 was to approve a draft “Code of Ethics” that takes into consideration comments by people made at the
311 last Public Hearing and comments made by Town Counsel. The final draft is being worked on and will be
312 distributed to all the members of all the committees in a week or so for review and comment. He said
313 the Code of Ethics Committee will take all comments into consideration, incorporate what they can, and
314 come up with a final “draft” to be voted on by the Legislative body in May.

315
316 Correspondence Received from Counsel To the Town of North Hampton - Mr. Field referred to
317 correspondence from Attorney Matt Serge, dated July 1, 2011, regarding Appeal of the Horne Case, so
318 styled, and said if the Board wished to discuss it he would recuse himself from the discussion. The Board
319 did not wish to discuss the correspondence. The correspondence was filed.

320
321 Materials-Office of Energy and Planning - Mr. Fullerton and Mr. Williams provided the Board copies of
322 materials they received from the Land Use training sessions they attended to the Board Members for
323 their review.

324
325 Alternate Member, Robert Landman, provided copies of the document prepared by Brandon Kerner, of
326 the Department of Environmental Services, regarding rock blasting, site preparation, and water quality

327 measures. Ms. Chase informed the Board that the issue regarding “blasting protocols” is currently being
328 addressed by the Planning Board. The Board agreed that the Zoning Board did not need to get involved
329 at this time.

330

331 Chair Field said that after discussions with the Building Inspector at last month’s meeting, there do
332 appear to be some administrative holes in the right of the public to involve themselves in “land use”
333 involving Building Permit issues within the appropriate statutory period of time. Mr. Field said that he
334 spoke with Selectman Wilson on this matter in an informal basis. He suggested the Board discuss the
335 topic at their August Meeting, to determine whether the Board supports a multi Board Meeting among
336 the Select Board and Planning Board, so that the ZBA can present any issues they have that they would
337 like the other Boards to consider for the May Meeting next year. Chair Field said that there are several
338 issues in our Zoning Ordinances that may constitute problem areas that may need to be corrected. He
339 asked Ms. Chase to add, “Discussion regarding possible Zoning Ordinance recommended changes and
340 possible joint meeting” to the August Agenda.

341

342 There was no other business to come before the Board.

343

344 **Ms. Peckham Moved, and Mr. Fullerton seconded, the Motion to adjourn the Meeting at 8:10pm.**
345 **The vote was unanimous in favor of the Motion (5-0).**

346

347 Respectfully submitted,

348

349 Wendy V. Chase

350 Recording Secretary

351

352 Approved, as revised by Chair Field, August 23, 2011

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354