



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, October 25, 2011, at 6:30pm
Town Hall**

6

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; David Buber, George
14 Lagassa, and Phelps Fullerton. (5)

15
16 **Members absent: None.**

17
18 **Alternates present:** Dennis Williams and Jonathan Pinette. (2)

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

22
23 **I. Preliminary Matters.**

24 **Call to order; Pledge of Allegiance; Roll call/Introduction of Members/Alternates;**
25 **Recording Secretary Report; Swearing in of Witnesses (RSA 673:15); Preliminary**
26 **Matters; Minutes of Previous Meeting – August 23, 2011.**

27
28 Chair Field called the Meeting to Order at 6:30pm.

29
30 Pledge of Allegiance -Mr. Field invited the Board Members and those in attendance to rise for a Pledge
31 of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and
32 failure, neglect or inability to do so will have no bearing on the decision making of the Board or the
33 rights of an individual to appear before, and request relief from, the Board.

34
35 Introduction of Members and Alternates -Mr. Field introduced Members of the Board and
36 acknowledged the Alternate Members present (stated above).

37
38 Recording Secretary Report - Ms. Chase reported that the October 25, 2011 Agenda was properly posted
39 on October 11,2011 in the Portsmouth Herald and at the Library, Town Clerk's Office, Town Office and
40 the Town's website.

41
42 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Field swore in all those who were
43 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
44 Case or matter to be heard.

45 Chair Field explained to the Board that he was in receipt of a copy of the September 13, 2011
46 Conservation Commission Meeting Minutes. He said that at last month's ZBA Meeting there was
47 discussion by a couple of "parties" relating to the September 13, 2011 Conservation Commission
48 Meeting and, although requested by him, the Minutes were not available to the ZBA at that time. He
49 said that some of the testimony at the ZBA Meeting related to the September 13th Conservation
50 Commission Meeting and asked if the Board would agree to add the September 13, 2011 Conservation
51 Commission Meeting Minutes to the record of the September 27, 2011 ZBA Meeting.

52

53 **Mr. Buber Moved and Mr. Lagassa Seconded the Motion to allow the record to be supplemented by**
54 **the Minutes of the Conservation Commission Meeting of September 13, 2011.**

55 **The Vote was unanimous in favor of the Motion (5-0).**

56

57 **II. Unfinished Business**

58

59 **Case #2011:04 – John Normand, 75 South Road, North Hampton, NH.** – Chair Field explained that Mr.
60 Normand's Case was decided and, Approved by the Board at the August 23, 2011, ZBA Meeting and one
61 of the Conditions of Approval was that the Septic Plan submitted to the Board was to be Recorded at the
62 Rockingham County Registry of Deeds. The Septic Plan had been rejected by the Register of Deeds
63 because it did not comply with statutory standards for Recording Plans pursuant to RSA 478:1-a. The
64 Board received a Legal Opinion from the Local Government Center (LGC) that provided three (3) options
65 that would seemingly achieve the purpose of maintaining a formal record the Board's Conditions of
66 Approval.

67

68 Chair Field said that he was not present at the August 23, 2011 Meeting, but would like the issue
69 corrected so that the Applicant can continue with the Project.

70

71 Mr. Buber referred to the Second (2nd) Option offered by the LGC to attach the Septic Plan to the
72 Decision letter and have Mr. Normand sign the Septic Plan and confirm that he concurs that it is the
73 correct Plan, and then keep it on file at the Town Offices with the Decision Letter. Mr. Fullerton, Ms.
74 Peckham and Mr. Lagassa were in full agreement.

75

76 **Mr. Buber Moved and Mr. Fullerton Seconded the Motion that the Septic Plan be attached to the**
77 **Decision Letter and signed by Mr. John Normand that he concurs that it is the correct Plan and to keep**
78 **it on file at the Town Offices with the Decision Letter.**

79 **The vote passed in favor of the Motion (4 in favor, 0 opposed and 1 abstention). Chair Field abstained**
80 **because he was not present at the August 23, 2011 Meeting.**

81

82 Chair Field called for a three (3) minute recess so that Mr. Normand could sign/endorse the Septic Plan
83 and formally present it to Ms. Chase for safe-keeping in the Town archival files.

84 Chair Field reconvened the Meeting.

85

86 Chair Field directed Ms. Chase to copy the Decision Letter, as previously published and add language
87 explaining that the signed Septic Plan would be attached to the final Decision Letter and be placed on
88 file at the Town Offices and issue a copy to Mr. Normand as a "revised" Decision Letter.

89

90 **III. New Business**

91

92 **1. #2011:08 David and Suzanne Pope, Trustees, David A. & Suzanne Pope Revocable Trust, PO Box**
93 **905, North Hampton, NH; Property location: 16 Ocean Blvd, North Hampton; M/L 001-035-000; Zoning**
94 **District: R-2; Applicant: Barr-Moran, Inc., PO Box 1076, North Hampton, NH 03862.** The Applicant
95 requests an Appeal of an Administrative Officer's decision pursuant to RSA 674:33, 676:5 of an alleged
96 violation of Article V, Section 506.6.G of the North Hampton Zoning Ordinance relating to signs, made by
97 the Town of North Hampton's Code Enforcement Officer. Property Owners: David and Suzanne Pope,
98 Trustees, David A. & Suzanne Pope Revocable Trust.
99

100 In attendance for Presentation of the Appeal:

101 Attorney Craig Salomon, Representative to the Applicants

102 Robert Lee, Applicant

103

104 Chair Field Swore in Mr. Lee as a Witness. Attorney Salomon had been previously sworn.

105

106 Mr. Salomon explained that he is representing Barr Moran Inc., who leases the property (Beach Plum)
107 from the Owners, David A. and Suzanne Pope Revocable Trust.
108

109

109 Mr. Salomon presented his Case to the Board. He explained that the "Beach Plum" has been in
110 existence since before WWII, and is leased by Barr Moran Inc. with Ms. Nancy Lee as President and Mr.
111 Robert Lee as Manager. The existing sign at the "Beach Plum" is presumably "grandfathered" in excess
112 of the allowable 18-square feet. The Code Enforcement Officer sent a "Letter of Violation" to Robert
113 and Nancy Lee, dated August 16, 2011, stating that the two carvings (lobsters holding ice cream cones)
114 on the property constitute illegal signs pursuant to Article V, Section 506.6.G of the North Hampton
115 Zoning Ordinance. The words "Beach Plum" are written across the front of the sculptures and it is the
116 Code Enforcement Officer's interpretation that the carvings of the "lobsters" are signs.
117

118

118 Mr. Salomon distributed pictures of the "lobster" carvings, as well as pictures of other "carvings"
119 erected along Route 1, and they were submitted into evidence. Chair Field assigned exhibit letters (A-C)
120 to the photographs.
121

122

122 Mr. Salomon said that both, Richard Mabey, North Hampton's Code Enforcement Officer, and Robert
123 Southworth, Little Boar's Head Village District's Building Inspector, received complaints about the
124 "lobster" carvings at the "Beach Plum" and they both determined that the "carvings" were signs and did
125 not comply with the Sign Ordinance.
126

127

127 Mr. Salomon said that the Applicant requests that the Board determine that the "carvings" are
128 "sculptures" and "works of art" and not "signs".
129

130

130 Mr. Salomon referred to Article III, Section 302.36 – definition of "Sign" that was adopted in 1973 and
131 said it was a fairly broad definition. He said the new Sign Ordinance, Article V, Section 506, was adopted
132 in 2006, and he referred to Section 506.1.A that states that the Ordinance regulates *all* signs; therefore
133 the definition under Section 506.2.U should be the operative definition, because it is under the current
134 Zoning Ordinance and not as broad as Section 302.36. Mr. Salomon read from the definition of "sign"
135 under Section 506.2.U – *wall or image displaying any message visible to the public*. He also looked up
136 the word "message" in the Webster's Ninth New Collegiate Dictionary – "a communication in writing, by
137 speech, or by signals". Mr. Salomon suggested that the "lobster sculptures" are not a "writing"; not a
138 "speech" and not a "signal"; a sign is a message that is usually two dimensional and the "sculptures" are
139 three dimensional objects. Mr. Salomon also said that the "sculptures" are popular with the children

140 and are perceived by the patrons as objects of art. Chair Field noted that "definitions" taken from a
141 dictionary often differ in completeness and meaning from one dictionary to another.

142

143 Mr. Salomon submitted an E-Mail communication from Mr. Daniel Healey sent to Wendy Chase. He and
144 his client assumed that Mr. Healey was a patron of the "Beach Plum".

145

146 Mr. Field read the E-Mail into the record and assigned it Exhibit "D":

147 *Wendy*

148 *I am impressed that an ordinance written in 1973 was drafted with such broad description that even*
149 *today, by broad interpretation, "display" could probably and rightly so, by definition of the ordinance,*
150 *encompass the lobster sculpture displays, the lighted Harley Rider at the Harley Davidson Dealership, the*
151 *eye-catching holiday displays at Regal Limousine and could also likely be interpreted to include flower*
152 *arrangements, hanging plants and even distinctive exterior paint colors used to catch the eye of*
153 *passersby's. Daniel M. Healey, Brown and DuPont Forensic Consultants, LLC*

154 Mr. Salomon submitted photos of some of the Halloween seasonal "scare crows" Mr. Healey mentioned
155 in his E-Mail into the record and commented that they are similar to the "lobster sculptures".

156

157 Ms. Peckham to Mr. Salomon: "Do you have a, ah, a Grandfathering argument in, are you,..."

158 Mr. Salomon: "The only thing that's Grandfathered is the existing sign, not related to the carvings."

159 Ms. Peckham: "So we are only here for the carvings?"

160 Mr. Salomon: "Yes."

161 Ms. Peckham: "Okay."

162 Mr. Buber: "Excuse me, Mr. Salomon, did you mean the existing pole sign?"

163 Mr. Salomon: "Yes."

164 Mr. Buber: "With the sign that says Beach Plum on the top..." "The tall white pole."

165 Mr. Salomon: "Yes, yup."

166 Mr. Buber: "That's the only one that's Grandfathered, correct?"

167 Mr. Salomon: "Right."

168 Mr. Field assigned Exhibit letters to each of the photos.

169 Mr. Salomon submitted a photo of a "bear sculpture" in front of Simmons and Sons Business on
170 Lafayette Road and of a "pig sculpture" in front of a restaurant on Lafayette Road that are more similar
171 to the "lobster sculptures".

172

173 Mr. Salomon called to the Board's attention to Section 506.1.A.2 of the Zoning Ordinance that clearly
174 reflects that signs have "letters" on them and that is how they convey a message. He said that Mr. Lee
175 has offered to remove the letters "Beach Plum" from the "lobsters" if that is the issue. Mr. Salomon
176 commented on the existing "Beach Plum" sign and estimated it to be less than 18-square feet; he
177 suggested that if it were proven to be true, would the Board consider measuring just the area on the
178 "lobster" that read "Beach Plum" and adding that onto the allowed 18-square feet of signage in a district
179 other than the I-B/R.

180

181 Mr. Lee explained that the "sculptures" are one piece of solid wood carved by a chainsaw and were
182 done by World Renowned Sculptor, Gregg Murphy. They used the smaller "lobster sculpture" for the

183 Seafood Festival and moved it to the "Beach Plum" in 2007 and the larger sculpture was added to the
184 site in February 2011. He also said that the larger "lobster sculpture" is around 9 feet tall.

185

186 Mr. Field said he drives by the "Beach Plum's" Billboards on Route 1 and Route 1A almost daily and they
187 are attractive, effective, and eye catching signs. He asked how the message communicated by the
188 "lobster sculptures" differs from the image being used on the Billboard signs. He presumed that their
189 effectiveness must have influenced the "Billboard" design to some extent.

190

191 Mr. Salomon referred to the definition of "message"; speech, writing or signals, and the "sculptures"
192 don't encompass any of those things. He respectfully reminded the Board that all "zoning" is an
193 infringement on property rights and if it is a "close call" the Board has to vote in favor of the Property
194 Owner. He said that both he and Mr. Mabey acknowledge that the Administrative Decision was a "Close
195 call".

196

197 Mr. Salomon explained that Little Boar's Head Village District Zoning Board has a different violation
198 pending; it is the amount of signs; not the same as the Administrative Appeal before this Board.

199 Ms. Peckham referred to Section 506.2.U of the Zoning Ordinance "Sign: an object, including a structure,
200 movable object, wall or image displaying any message visible to the public". She said that, in her
201 opinion, if applying this section, the sculptures are signs.

202

203 Mr. Field said that in his opinion the "lobster", itself, is a sign and that the "lobster holding ice cream
204 cones" conveys a message.

205

206 Mr. Buber also referred to Section 506.2.U and to Section 506.1.A – "The primary purpose of a sign is to
207 convey information". He said that the Ordinance allows a sign of 18-square feet in a district other than
208 the I-B/R district and if the Board concludes the "lobster sculptures" to be signs, then it is certainly
209 "oversized".

210

211 Mr. Fullerton questioned if the "lobsters holding ice cream cones" were used as a logo or a trademark.
212 He said that he has professional expertise in Early American Advertisement and is a paid consultant for
213 the James D. Julia Auction Gallery and catalogs their auctions of antique advertising.

214

215 Chair Field interrupted and commented that it may not be fair to the Applicant for Mr. Fullerton to offer
216 his professional perspective. He suggested that Mr. Fullerton consider either recusing himself, and then
217 make his comments from the "floor" as a member of the audience, or keep his comments to himself and
218 make his judgment based on his knowledge without imparting the same to the Board in a manner which
219 might affect their decision making

220

221 Mr. Salomon was made aware that there were two (2) Alternate Members present that could be seated
222 for Mr. Fullerton. Mr. Salomon said that if Mr. Fullerton were to "step down" and give his testimony
223 then the Chair should seat an Alternate in his stead.

224

225 Mr. Lagassa and Mr. Buber did not have any problem with allowing Mr. Fullerton to offer his expert
226 testimony as a Member of the Board.

227

228 Ms. Peckham said that it was up to Mr. Fullerton to decide what to do.

229

230 Chair Field asked Mr. Fullerton whether he wanted to render his expert opinion as a Member of the
231 Audience or as a Board Member.

232

233 Mr. Fullerton said that he would not speak as a Board Member if it would, in anyway, jeopardize the
234 proceedings this evening; he would speak from the Audience.

235

236 Chair Field asked Mr. Salomon how he felt about allowing Mr. Fullerton to offer expert testimony.

237

238 Mr. Salomon said that Mr. Fullerton could speak as a Member of the Board and that he would not raise
239 it later as a procedural issue. Chair Field then continued the Public Hearing with Member Fullerton
240 remaining seated, without objection of the Applicant.

241

242 Mr. Fullerton said that he is a paid expert for the James D. Julia Auction Gallery in Fairfield Maine. He
243 has cataloged their Auctions and Country Store Consignments for the past ten (10) years. He suggested
244 that the "lobster carvings" are "trade signs"; a "trade sign" is a three dimensional sign that merchants
245 began using shortly after the Civil War because many customers couldn't read. He gave the example of
246 the Cigar Store wooden Native American Indian carving as a "trade sign". Mr. Fullerton referred to the
247 definition of a Sign under Section 506.2.U and Section 506.A.1 that "The primary purpose of a sign is to
248 convey information". Mr. Fullerton also commented on the "Bear" sculpture mentioned by Mr. Salomon
249 and said that the "Bear" is in a different district (I-B/R) than the "Beach Plum" (R-2). He inquired
250 whether or not the Applicant would be able to apply to the Planning Board for a Conditional Use Permit
251 if he were denied by the ZBA. The Chair said that he believed Mr. Lee had a right to do so.

252

253 Ms. Peckham agreed with Mr. Fullerton that the "lobsters" were "trade signs" and said that the
254 Appellant has testified that the sculptures of the "lobsters holding ice cream cones" exist because
255 nobody knew what they were selling. She said that, in her opinion, the "Bear" on Lafayette Road in
256 front of Simmons and Sons is not a "trade sign" because it does not convey an advertisement message.
257 She also commented on the pictures presented by the Applicant of the "scare crows" and said those are
258 allowed under the Section dealing with "seasonal signs".

259

260 Mr. Lagassa commented on the fact that "trade signs" are a historic phenomenon, not seen very often.
261 He said that Mr. Fullerton testified that there is historic significance to "trade signs". He said one could
262 argue that the "lobsters" are a service to the Community and might qualify as a "sculpture" especially if
263 the words "Beach Plum" were removed. He also said that the "lobsters" may qualify as a monument
264 sign that would require a permit.

265

266 Mr. Buber agreed with Ms. Peckham in regards to the "bear" sculpture on Lafayette Road and the "scare
267 crows" around Town. He said that the "bear" is in the I-B/R District and the "Beach Plum" is in the R-2
268 District; "apples and oranges".

269

270 Mr. Lee said that the "Bear" sculpture has the word "open" across its chest. He also mentioned that the
271 "lobster holding ice cream cones" image is not the "Beach Plum's" logo; it does not appear on
272 everything including the original "grandfathered" sign.

273

274 Mr. Field opened the Public Hearing to audience participation at 7:40pm.

275 Mr. Field closed the Public Hearing without additional public comment being offered.

276

277 Mr. Buber asked to address Mr. Mabey. The Chair allowed it.

278

279 Mr. Buber referred to the Zoning Violation sent to Mr. Robert Lee, dated July 26, 2011, by the Little
280 Boar's Head Village District's Zoning Inspector, Robert A. Southworth, Jr. He read a portion of the letter
281 into the record: "Red Mabey and I found a total of four signs on your property and we discussed three
282 sign violations with you. We found the sandwich board, and both carved lobsters holding ice cream
283 cones to be three signs over the amount of signs you are allowed". Mr. Buber referred to the violation
284 letter sent out by Mr. Mabey and noted that the "sandwich board" signs were not mentioned.

285

286 Mr. Mabey said that he did not deal with the "sandwich board" signs. He said he was not sure how long
287 they had been there. He said that he got a complaint on the "lobster sculptures" and that's what he
288 dealt with. Mr. Mabey submitted two pictures of the "lobster sculptures" into the record. Chair Field
289 assigned them exhibit "J" and exhibit "K".

290

291 Chair Field asked Mr. Mabey who it was that made the complaint to him about the "lobsters". Mr.
292 Mabey said that he was told of the complaint by LBH ZBA Chair Janet Gorman. Mr. Mabey said he
293 believed it to be one of the Abutters.

294

295 Mr. Mabey said that after inspecting the "lobster sculptures" he concluded that they were signs, not art
296 work.

297

298 Chair Field asked Mr. Lee if he applied to the City of Portsmouth to allow him to place "lobster
299 sculptures" at his Lafayette Road "Beach Plum" business. Mr. Lee explained that they have a "sculpture"
300 inside the business, but the City of Portsmouth changed their Sign Ordinance and because his business is
301 in a location deemed to be a shopping plaza, he is not allowed to put them outside where he wants to.
302 Mr. Lee noted for the record that Mr. Southworth told him that Susan Boise made the initial complaint.
303 Mr. Mabey confirmed that to be true.

304

305 Ms. Susan Boise was present and Sworn in as a Witness. She said she is an abutter to the "Beach Plum",
306 and that she did not initiate any complaint in terms of the "Beach Plum" and in regards to "signs". She
307 said that she came to this Meeting/Hearing because she was notified as an Abutter. She said that the
308 "Beach Plum" is in a residential zone and it is "cluttered", and she is not in favor of anymore "clutter" in
309 the Residential District. She said that her father, William Fowler, fought hard to keep that area
310 "Residential". She noted that one of her major objections is that the "Beach Plum" has evolved into a
311 major "restaurant" operation, and that it produces much media advertising and attracts people as a
312 place to drive to eat and not as a place for North Hampton beach users as was its initial mission.

313

314 Chair Field commented that he respected Ms. Boies' statement that she did not make the initial
315 complaint.

316

317 Mr. Salomon said that Mr. Mabey made a determination that the "lobster carvings" are signs and they
318 dispute that. He commented that Mr. Lee plans to go before the Little Boar's Head Village District ZBA
319 on a different issue than the issue before this Board. Mr. Salomon suggested the Board Members read
320 Section 506 narrowly and conclude that the "carvings" do not convey a "message" and are not "signs".

321

322 Mr. Fullerton remarked that he liked the "lobster" signs, but supports Mr. Mabey's analysis that the
323 "lobsters" are "trade signs". He mentioned that they may want to apply to the Planning Board for a
324 Conditional Use Permit under Section 506.3.

325

326 Mr. Buber said that the “lobsters” are conveying information that they sell some kind of lobster and ice
327 cream, and that he supports Mr. Mabey’s position that they are signs.

328

329 Mr. Lagassa said that reason dictates that the “lobsters” be viewed as advertisement and qualify as
330 signs.

331

332 Ms. Peckham said that she likes the “lobster sculptures”, but agrees that they fall within the definition of
333 “signs”.

334

335 Chair Field commented that the “lobster sculptures” are “charming” and that “art” can be a “sign”. He
336 said, that in this case, they are advertising a product and service.

337

338 **The Board Voted 5 in favor, 0 opposed and 0 abstentions, that the Building Inspector made a correct**
339 **interpretation of the North Hampton Zoning Ordinance.**

340

341 Chair Field reminded the Applicant of the 30-day appeal period.

342

343 Chair Field called for a five (5) minute recess.

344 Chair Field reconvened the Meeting at 8:20pm.

345

346 **III. Other Business.**

347

348 **1. “Code of Ethics” – Committee Report – Mr. Lagassa** – The Board was in receipt of the “final draft” of
349 the Code of Ethics. Mr. Lagassa asked that the Member’s review it and he will keep them informed of
350 when the Select Board will hold a Public Hearing on it.

351

352 **2. Communication/Correspondence and Miscellaneous** - Chair Field reported that , due to scheduling
353 conflicts, the November 29, 2011, ZBA Meeting will be held in the Mary Herbert Conference Room at
354 6:30pm.

355

356 Chair Field reported that he has had communication with Town Administrator Steve Fournier and Select
357 Board Member Phil Wilson about reconfiguring the Hearing/Meeting space to create a “well” in the
358 Town Hall such that both Applicants, and the Public will have a place to display maps, materials and
359 plans regarding their applications for the Board as well as the television and Town Hall audiences to see.
360 He reported that the circumstance had been observed by the Select Board and that the cable T.V.
361 production team would be advised of the need.

362

363 **3. Minutes – September 27, 2011** – typos were corrected, **Mr. Lagassa Moved and Mr. Buber Seconded**
364 **the Motion to approve the September 27, 2011 Meeting Minutes with edits. The vote was unanimous**
365 **in favor of the Motion (5-0).**

366

367 **4. Zoning Ordinance Review Ad-Hoc Committee**--Mr. Field reported that the Zoning Ordinance Review
368 Ad hoc Committee will meet on Monday, October 31, 2011, at 8:00am in the Mary Herbert Conference
369 Room.

370

371 **5. Local Government Center Presentation.**--Mr. Field reported that the he and Mr. Buber attended the
372 LGC presentation at the Newington Town Hall on October 19th, and the LGC did a good job presenting.
373 He asked that Ms. Chase order copies of the course booklets on “Land Use Law Update” for all of the

ZBA Meeting Minutes

374 Board Members. He advised that the New Hampshire Supreme Court has issued several very important
375 decisions relating to Zoning in the past few months that substantially alter and/or refine existing law.

376

377 The Meeting was adjourned at 8:30pm.

378

379 Respectfully submitted,

380

381 Wendy V. Chase

382 Recording Secretary

383

384 **Approved as amended November 29, 2011**

385