



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, December 13, 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 Robert Landman. (2)

19
20 **Administrative Staff present:** Wendy Chase, Recording Secretary. (1)

21
22 **Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 613:14 and 15);**
23 **Recording Secretary Report**

24
25 Chair Field called the Meeting to Order at 6:31 p.m.

26
27 Pledge of Allegiance -Mr. Field invited the Board Members and those in attendance to rise for a Pledge
28 of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and
29 failure, neglect or inability to do so will have no bearing on the decision making of the Board or the
30 rights of an individual to appear before, and request relief from, the Board.

31
32 Introduction of Members and Alternates -Mr. Field introduced Members of the Board and
33 acknowledged the Alternate Members who were present (as identified above).

34
35 Recording Secretary Report - Ms. Chase reported that the December 13, 2011, Meeting Agenda was
36 properly published in the December 2, 2011 edition of the Portsmouth Herald, and, posted at the
37 Library, Town Clerk's Office, Town Office and the Town's website.

38
39 Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Field swore in all those who were
40 present and who intended to act as witnesses and/or offer evidence to the Board in connection with any
41 Case or matter to be heard.

42

43 At the suggestion of Member Buber and as an accommodation to the Applicants, the Board agreed to
44 postpone consideration of the November 29, 2011, Minutes until after the two (2) New Cases before the
45 Board were heard, because the content of the Minutes did not pertain to either Case.

46

47 I. Unfinished Business-

48

49 Chair Field commented that there was no “Unfinished Business”, but he reported to the Board that he
50 attended the December 12th Select Board Meeting and that there had been an Agenda Item before the
51 Select Board on discussion of “Building Permits” and “Certificates of Occupancy” and the possible
52 revisions to “penalty” structure. He reported that, as a citizen and not as an authorized representative
53 of the Board, he indicated to the Select Board that the Zoning Board is occasionally confronted with
54 issues regarding review of Building Permits and Certificates of Occupancy. He stressed the importance
55 that Building Permits and Certificates of Occupancy be properly processed and that the Public has the
56 right to expect regulatory compliance and to complain of inadequate and/or unlawful actions being
57 taken by a holder, within a prescribed period of time.

58

59 II. New Business-

60

61 Case Docket:

62

63 **1. #2011:09 – Linda E. Van de Car, 23 Pine Road, North Hampton, NH. Property location: 23**
64 **Pine Road, North Hampton; M/L 007-012-000; Zoning District: R-1.** The Applicant requests a
65 Variance from Article IV, Section 406 – Setback regulations to allow the permanent installation
66 of a generator five (5) feet from the side property line where fifteen (15) feet is required.
67 Property owner: Linda E. Van de Car, Trustee of the Linda Van de Car Revocable Trust of 2007,
68 23 Pine Road, North Hampton, NH.

69

70 In attendance for this Application:

71 Linda Van de Car, Owner/Applicant

72

73 Ms. Van de Car said that her house is a ranch style situated on a narrow lot (100’ x 200’). She proposes
74 to install a generator between her garage and her neighbor’s garage and that such location will help
75 mitigate the noise it will produce. She said that she spoke to her neighbor and they do not object. She
76 said it will be located where the electrical power service line enters the house from the electrical pole.

77

78 Ms. Van de Car addressed the Variance Criteria:

79

80 **1. Would granting this variance be contrary to the “Public Interest” or “Public Safety”?**

81

82 Ms. Van de Car said that she spoke to all of her abutters and neighbors and they all said that they were
83 okay with her installing the generator.

84

85 **2. Would granting this variance be consistent with the “Spirit of the Ordinance”?**

86

87 Ms. Van de Car said that the installation will have minimum impact on the abutters because it will be
88 installed between two garages that will mitigate any noise.

89

90 3. Would "Substantial Justice" be done by granting this variance?

91

92 Ms. Van de Car said that "Substantial Justice" would be done because she has a small lot and a sump
93 pump that drains water out to the back of the lot. She would like assurance that the sump pump will
94 continue operating if the power goes out. She would like to keep the other side of the house open for
95 emergency vehicles to access her property if need be, because the septic system is on the other side and
96 does not want vehicles on top of that.

97

98 4. Would granting this variance result in "Diminution of Values" of surrounding properties?

99

100 Ms. Van de Car said that she did not believe installing a generator would diminish surrounding property
101 values.

102

103 5. Would literal enforcement of the provisions of the ordinance result in an "Unnecessary Hardship"?

104

105 Ms. Van de Car said that the proposed location is a logical one; it is on the side where it will allow the
106 proper electrical connections that it needs to operate.

107

108 The plan depicted the location of the proposed generator and the propane tank. Ms. Van de Car said
109 that the generator will be between approximately 1,100 to 1,200 watts.

110

111 Chair Field continued the Public Hearing by inviting any person present to speak for or against the
112 Proposal.

113

114 There was no Public Comment.

115

116 The Board discussed possible visual and noise issues pertaining to the generator. It was determined
117 that the generator would be located in the most logical place, next to the electrical panel and between
118 the two garages to mitigate the noise. The Board agreed that the times when the generator would,
119 more than likely be used, would be during times of distress when the neighbors may also be running
120 their generators. The Board discussed the possibility of the Applicant screening the propane tank and
121 the generator. The Board then agreed it wouldn't be necessary for it to act, as the installation and
122 operation of the generator and propane tank would be subject to the approval and supervision by other
123 Town officials more technically qualified.

124

125 Chair Field invited any other Public Comment.

126

127 There was no additional Public Comment. Chair Field closed the Public Hearing at 6:55 p.m.; and, then
128 deliberated on the matter.

129

130 **Mr. Lagassa Moved and Mr. Buber seconded the Motion to approve the Variance Request from Article**
131 **IV, Section 406 to allow the permanent installation of a generator five (5) feet from the side property**
132 **line where fifteen (15) feet is required.**

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

134

135 Chair Field reminded Ms. Van de Car of the thirty (30) day Appeal period, and advised her to please be
136 cognizant of seeking an appropriate decibel range, when purchasing a generator.

137
138 Chair Field reported that he had received correspondence from the Conservation Commission informing
139 him that they are holding their monthly meeting this evening and would not have the opportunity to
140 provide an advance review of Case #2011:10 – Peter Horne, Trustee; he asked the Board to take such
141 information under consideration when conducting their business. Chair Field also noted that the
142 property as to which Mr. Horne requests a Variance is separate and apart from the other Trust
143 properties of Mr. Horne which have had issues previously considered by the Board.

144
145 Phil Nunese, a Witness for Mr. Horne, arrived during the Meeting. Chair Field swore in Mr. Nunese.

146
147 Chair Field, a resident on Mill Road, recused himself for the reason of eliminating any claim of bias on his
148 part.

149
150 Ms. Peckham assumed the Chair.

151
152 Alternate Dennis Williams was then seated in lieu of Mr. Field.

153
154 **2. 2011:10 – Peter Horne, Trustee, LLIM Nominee Trust, 112 Mill Road, North Hampton, NH.**
155 **Property location: 116 Mill Road, North Hampton, NH; M/L 006-148-000; Zoning District: R-2.**
156 The Applicant requests a Variance from Article IV, Section 409.9 – Buffer Zone Restrictions to
157 allow the construction of outdoor steps for the purpose of providing egress from the double
158 doors on the rear of the building. Property owner: D.N.O.P., LLC, PO Box 1435, North Hampton,
159 NH 03862.

160
161 In attendance for this application:

162 Peter Horne, Owner/Applicant

163 Phil Nunese, Contractor

164
165 Mr. Horne submitted copies of revised Plans and new photos to the Board. The changes included the
166 height of the deck, and that he plans to use four (4) “sonotubes” in the construction.

167
168 Mr. Williams asked how long the “French doors” had been there. Mr. Horne explained that the doors
169 have always been there but there were never outside steps to them. He said that there are no records
170 in Town of steps ever being at that location.

171
172 Mr. Lagassa asked if this was the house Mr. Horne lived in. Mr. Horne replied, “No”, and said that the
173 former owner, Mrs. Carolyn Congdon lives in the house as a tenant; Mr. Horne lives in the house on the
174 other side of the Mill Pond and dam.

175
176 At the invitation of Vice Chair Peckham, Mr. Horne addressed the five (5) Variance Criteria:

177
178 **1. Would granting this variance be contrary to the “Public Interest” or “Public Safety”?**

179
180 Mr. Horne replied, “No”, because it is a good idea to have steps outside the “French doors”, particularly
181 from a safety and emergency egress perspective.

182
183 **2. Would granting this variance be consistent with the “Spirit of the Ordinance”?**

184
185 Mr. Horne said that although the Zoning Ordinance does not specifically address “safety”, it’s in all the
186 Ordinances not to promote any building code safety hazard.

187
188 **3. Would “Substantial justice” be done by granting this variance?**

189
190 Mr. Horne replied, “Yes”, because there is no indication that there were ever stairs outside the “French
191 doors”.

192
193 **4. Would granting this variance result in “Diminution of Values” of surrounding properties?**

194
195 Mr. Horne replied, “No”, he said he would like to think that neighbors visiting the property would not
196 fall when stepping out the “French doors”.

197
198 **5. Would literal enforcement of the provisions of the ordinance result in an “Unnecessary Hardship”?**

199
200 Mr. Horne said that the property doors cannot be reasonably used in strict conformance with the
201 Ordinance, so a Variance is necessary for a reasonable use of the “French doors”. Mr. Horne explained
202 that the house was built in 1964 and the “French doors” have been there ever since he has owned the
203 property and there were no steps. He explained that the material used for the deck and steps will be
204 pressure treated wood and PVC, white plastic, with metal screws. The deck and steps will come off of
205 the house seven (7) feet or so. He said that the proposed outside steps will create a third exit off the
206 first floor of the house that will address a life safety issue.

207
208 Ms. Peckham had asked what kind of vegetation existed outside of the “French doors”. Mr. Horne
209 explained that he has to remove two (2) plants to put in the sonotubes and the rest of the area is made
210 up of a lawn; closer to the pond is remnants of a stone wall and beyond that is natural vegetation.

211
212 Mr. Fullerton commented that, after reviewing the new plans, he determined that additional risers and
213 treads would be needed to meet the current building codes, and the steps would come out further
214 towards the wetlands buffer.

215
216 Ms. Peckham opened the Public Hearing to those in favor of the Application.
217 There was no public comment.

218
219 Ms. Peckham opened the Public Hearing to those against the Application.
220 There was no public comment.

221
222 Ms. Peckham referred to the correspondence from the Conservation Commission and explained to Mr.
223 Horne that the Conservation Commission was reviewing his Application tonight and said that she was
224 inclined to wait for any comments they may have before rendering a decision. She said that she would
225 hold the Public Hearing open so that Mr. Horne would have the opportunity to respond by presenting
226 any evidence contrary to, or in addition to, anything the Conservation Commission has to say. Ms.
227 Peckham asked the Board Members for their opinions on the matter.

228
229 Mr. Buber said that it is always important to hear from the Conservation Commission but thought that
230 this Application was pretty “straight forward”. He said that the proposal is a basic plan of a couple of
231 steps extending out of the back of the house and doesn’t see where it’s adding or worsening an

232 impervious surface situation. He commented that there is drainage within the deck's platform and they
233 will be using pressure treated wood. He didn't feel that the Board needed to wait.

234
235 Mr. Williams said that there is a safety issue and agrees with Mr. Buber that the proposal is not
236 extravagant. He said the doors should have always had steps.

237
238 Mr. Lagassa agreed with both Mr. Buber and Mr. Williams. He said that it is a minimal impact
239 undertaking and it looks like it is well designed and is attractive.

240
241 Mr. Fullerton said that NH DES considers all decks to be impermeable surfaces. He said that the minimal
242 landing coming out on the deck of a four (4) foot door opening is three (3) feet; the design is for four (4)
243 feet. Mr. Fullerton said he doesn't know if the Conservation Commission would want to offset the
244 amount of impermeable surface elsewhere.

245
246 Ms. Peckham noted that the Conservation Commission offers "advisory counsel". She asked for a Vote
247 on whether to go forward with the Application this evening and render a decision.

248
249 **The Vote to move forward and render a decision passed (3 in favor, 1 opposed and 0 abstentions).**
250 **Mr. Fullerton voted against and Ms. Peckham did not vote.**

251
252 Ms. Peckham closed the Public Hearing. And, deliberations on the matter were begun.

253
254 Mr. Williams commented that there is a safety hazard and the Applicant is not asking a lot.

255
256 There was a comment made by Mr. Nunes from the floor and Ms. Peckham reminded him that she
257 closed the Public Hearing.

258
259 Mr. Fullerton commented on Mr. Nunes comment that the doors swing out. He said that the landing at
260 the door shall not be more than 1 ½ inches below the threshold resulting in another step added to the
261 stair design.

262
263 Ms. Peckham said that that is a Code Enforcement issue.

264
265 The Board discussed approving the Application with a condition that if the Building Inspector required
266 an additional riser, it would be allowed, and if it was not required; then it would not be allowed.

267
268 Mr. Buber thought it would be a good idea to have the Applicant sign and date the plan he submitted for
269 the record.

270
271 Ms. Peckham had Mr. Horne sign and date the plan, along with the pictures he submitted, and assigned
272 it as Exhibit "A".

273
274 **A Motion was made and Seconded to Approve the Variance from Article IV, Section 409.9, as**
275 **requested in Exhibit "A" submitted to the Board tonight, to allow the construction of outdoor steps**
276 **thirty-four (34) feet from the wetlands buffer with the condition that if the Building Inspector**
277 **determines that the design requires one (1) or two (2) additional risers they may be included in his**
278 **approval; however if the Building Inspector determines that one (1) or two (2) additional risers are not**

279 **required, then they shall not be allowed without seeking further relief from the Zoning Board of**
280 **Adjustment.**

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

282

283 Ms. Peckham reminded Mr. Horne of the thirty (30) day Appeal period.

284

285 Mr. Williams stepped down.

286

287 Chair Field reclaimed his seat.

288

289 Chair Field declared a short recess at 7:45 p.m.

290 Chair Field reconvened the Meeting at 7:48 p.m.

291

292 **III. Other Business-**

293

294 **1. “Code of Ethics” – Committee Report – Mr. Lagassa, as may be necessary.** Mr. Lagassa
295 had no new information to report.

296

297 **2. “Zoning Ordinance Review Ad hoc Sub Committee”- Final Committee Report on**
298 **Suggested modifications to Zoning Ordinance – Mr. Field.** – Chair Field explained that as

299 requested by the Board, the six (6) proposals had been reviewed and modified in some instances by the

300 Ad-Hoc Committee since the last Meeting of the Board. He further stated that, in response to

301 suggestions made by Vice Chair Peckham, he had rewritten Proposal #1 in the form of a “Special

302 Exception” rather than a “Variance”, and asked that the Members reconsider same and if their doubts

303 had been addressed, he asked to have their permission and privilege of forwarding it along with the

304 other Proposals to see if the other Boards conclude that such a change would be beneficial.

305

306 He said that the Ad hoc Committee defined “Person” in the definition Section 302 and added the

307 following “special exception” conditions, that if met, the “compound” could exist:

308

309 • The general provisions of Ordinance Section 405.2 are met to the satisfaction of the Zoning
310 Board of Adjustment.

311 • The landowner or Person making the Application for a Special Exception shall reside at premises
312 located within the “Compound” for not less than six (6) months in each calendar year.

313 • The Zoning Board of Adjustment shall receive satisfactory written notice from the Chief of the
314 North Hampton Fire Department, which certifies that the vehicular traffic pattern system within
315 the “Compound” provides adequate access and egress for emergency/and/or public safety
316 vehicles.

317 • The landowner or Person holding a Special Exception shall make no material change to any
318 residence within the “Compound” without first obtaining the permission of the Zoning Board of
319 Adjustment.

320

321 Ms. Peckham said that she thought it was better as a “Special Exception” rather than a “Variance”

322 because a “Variance” would be very difficult or perhaps impossible, and the Board would run into

323 “constitutional” issues. She said she has no particular objection to Proposal #1 as a “Special Exception”.

324

325 **Ms. Peckham Moved and Mr. Fullerton Seconded the Motion to change the language at the end of**
326 **Proposal #1's document to reflect the fact that the proposal has been presented to the ZBA, which has**
327 **approved it, and that it be moved along to the Planning Board and Conservation Commission for their**
328 **review and consideration.**

329
330 **The Vote passed in favor of the Motion to Refer Proposal #1, (4 in favor, 1 opposed, and 0**
331 **abstentions). Mr. Lagassa opposed.**

332
333 As to Proposal #2, Chair Field then explained that the Ad-Hoc Committee realigned Sections 705.3 and
334 705.4; there were no other significant changes.

335
336 **The Board voted unanimously in reconfirming approval and to move Proposal #2 forward (5 in favor, 0**
337 **opposed, and 0 abstentions).**

338
339 As to Proposal #3, Chair Field presented it without change.

340
341 **The Board voted unanimously in reconfirming to move Proposal #3 forward (5 in favor, 0 opposed and**
342 **0 abstentions).**

343
344 Ms. Peckham asked for confirmation that Proposal #4 is just expanding the definition on that particular
345 Section to clarify that "bodies of water" are not allowed. Chair Field said that was correct.

346
347 **The Board voted unanimously in reconfirming to move Proposal #4 forward (5 in favor, 0 opposed and**
348 **0 abstentions.)**

349
350 Chair Field said that he added a technical change to Proposal # 5 that was brought to his attention by
351 Mr. Buber.

352
353 Mr. Buber was then invited to present the case for Proposal #5. He then identified the changes made to
354 Proposal #5 from last month's Meeting.

- 355
- 356 • *There were no changes made to the first paragraph.*
 - 357 • *Insertion added to the end of the second paragraph as follows, internally or externally lighted*
358 *signs, whether illuminated directly or indirectly, are prohibited in the R-1 and R-2 Zoning*
359 *Districts. Mr. Buber explained that internally lighted signs are prohibited, but as the Zoning*
360 *Ordinance is currently written, there is nothing precluding someone from externally lighting*
361 *multiple signs in the R-1 and R-2 Zoning Districts.*
 - 362 • *Mr. Buber explained that in the third paragraph he "keyed" in on Mr. Fullerton's suggestions;*
363 *the revised paragraph, Contractor signs, including, but not limited to, signs placed by builders,*
364 *developers, architects, banks, lenders, etc., shall not exceed nine (9) square feet and shall be*
365 *limited to one (1) per residence or property where the work is being performed. No such sign*
366 *shall remain on the property or at a residence for a period longer than twelve (12) consecutive*
367 *months, or completion of construction, whichever first occurs. In case of "home occupation", no*
368 *sign shall exceed two (2) square feet.*

369
370 Mr. Buber explained that he and the Ad-Hoc Committee had suggested the "two (2)" square feet for
371 "home occupation" signs because it dove-tails with Little Boar's Head; they currently allow two (2)
372 square feet, and the Town's current Ordinance allows four (4) square feet for "home occupation" signs.

373
374 Ms. Peckham questioned the wisdom of the change to two (2) square feet because she thought it was
375 too limiting.
376
377 Mr. Buber asked Ms. Peckham not to mistake “home occupation” for a “business”. A “business” in the
378 R-1 and R-2 Zones are allowed up to twelve (12) square feet.
379
380 Alternate Landman was recognized by the Chair and commented from the floor that it gets dark early
381 this time of year and by 4:00 p.m. it’s too dark to read signs. He said that he would like to someday light
382 his sign, especially this time of year.
383
384 Chair Field said that if illumination of signs in the R-1 and R-2 Zoning Districts is allowed it could possibly
385 be abused and do harm to the Town’s neighborhoods.
386
387 The Board discussed how to distinguish between a “business” and a “home occupation” in the R-1 and
388 R-2 Zoning Districts.
389
390 Mr. Buber read the definition of “home occupation” – Section 302.16, *Home Occupation: An occupation*
391 *carried on in a dwelling unit which is clearly incidental and secondary to the use of the building for*
392 *dwelling purposes, and which does not change the character thereof.*
393
394 Mr. Buber read Section 506.6.H into the record, *Size, Home Occupation. No such sign advertising a*
395 *home occupation with an area in excess of four (4) square feet shall be permitted outside the Industrial*
396 *Business/Residential District. Only one such sign shall be permitted in conjunction with any building or*
397 *buildings on the same parcel of land.*
398
399 Mr. Buber said that he was just trying to get a little continuity between North Hampton and Little Boar’s
400 Head Zoning Ordinances.
401
402 Following further discussion, the Board agreed to change the proposed two (2) square feet back to the
403 current four (4) square feet for “home occupation” signs.
404
405 The Board discussed the proposal to replace Section 506.6.H. After a lengthy and thorough discussion, it
406 was a consensus of the Board (5 in favor, 0 opposed), to keep Section 506.6.H as it is and to strike the
407 last paragraph in the proposed Section 506.6.G, and to strike the proposal to replace Section 506.6.H;
408 and to move to approve Proposal #5 as amended.
409
410 **The Board voted unanimously to move Proposal #5 forward (5 in favor; 0 opposed; 0 abstentions.)**
411
412 Chair Field explained that the Ad-Hoc Committee made some changes to Proposal #6 by organizing and
413 structuring it better. Mr. Fullerton said that it is essentially the same language as the NH DES model, but
414 it has been changed and, hopefully, improved since last month’s Meeting.
415
416 Chair Field said that it identifies, for the Planning Board and the Conservation Commission, an issue
417 regarding “Rain Gardens”; it explains a review process in approving a “Rain Garden” and then what kind
418 of review process is going to take place during construction and on-going maintenance while the “Rain
419 Garden” serves its purpose.
420

421 **It was a consensus of the Board to move Proposal #6 forward to the other Boards (5 in favor, and 0**
422 **opposed).**

423
424 **A Motion was made and seconded to direct Chair Field to communicate with the Conservation**
425 **Commission and the Planning Board with regard to the six (6) Zoning Proposals, and that the**
426 **“architects” of the Proposals will be made available to defend their Proposals, and other Members of**
427 **the Board and Alternates are invited to attend any Hearing that comes up.**

428
429 **The Vote was unanimous in favor of the Motion (5-0).**

430
431 Chair Field stated that he would pass the six (6) measures along to the Conservation Commission and
432 Planning Board as soon as possible.

433
434 **3. Minutes – November 29, 2011** – Typographical and grammatical changes were made to the
435 November 29, 2011 Meeting Minutes following which the Board acted to approve same.

436
437 **Ms. Peckham Moved and Mr. Buber seconded the Motion to approve the November 29, 2011 Meeting**
438 **Minutes as amended.**

439
440 **The Vote was unanimous in favor of the Motion (5-0).**

441
442 **4. Communications/Correspondence and Miscellaneous** – Chair Field noted that new
443 evidence was submitted by Mr. Horne during his case that the Conservation Commission did not have a
444 chance to review, and assumed that if the Board found the evidence to be immaterial, it would
445 seemingly not have changed their vote. The Board agreed that the minor change to the Plans would not
446 have changed their perspective on it. (Secretary’s Note-Conservation Commission Chair Ganotis by
447 subsequent E-Mail to Chairman Field confirmed such view of the Conservation Commission and raised
448 no objection.)

449
450 **Other Business**

451
452 There was no “Other Business” before the Board.

453
454 Chair Field thanked the Town for its cooperation for the ZBA’s business during the year and wished each
455 Member and Alternate and their families, and everyone in Town government, on behalf of the Board, a
456 Merry Christmas and Happy Holidays, and a prosperous New Year.

457
458 The next Zoning Board Meeting is scheduled for Tuesday, January 24, 2012 at 6:30 p.m. at the North
459 Hampton Town Hall.

460
461 **Ms. Peckham Moved and Mr. Buber seconded the Motion to Adjourn the Meeting.**

462
463 The Meeting was adjourned at 8:44 p.m.

464
465 Respectfully submitted,

466
467 Wendy V. Chase
468 Recording Secretary **Approved 01/24/2012**