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**Meeting Minutes**  
**Town of North Hampton**  
**Zoning Board of Adjustment**  
**Tuesday, June 26, 2012 at 6:30pm**  
**North Hampton School Gymnasium**  
**201 Atlantic Avenue North Hampton, NH**

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10 These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a  
11 transcription. All exhibits mentioned in these Minutes are a part of the Town Record.

12 **Attendance:**

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14 **Members present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair, George Lagassa, and  
15 Robert Landman. (4)

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17 **Members absent:** Phelps Fullerton. (1)

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19 **Alternates present:** Dennis Williams and Lisa Wilson (who joined the Meeting in progress). (2)

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21 **Administrative Staff present:** Wendy Chase, Recording Secretary.

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23 **Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);**  
24 **Recording Secretary Report**

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26 Chair Field called the formal Meeting to Order at 6:30 p.m.

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28 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the  
29 Alternates who were present (as identified above).

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31 Pledge of Allegiance - Chair 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 solely for those who choose to do so and  
33 failure, neglect or inability to do so will have no bearing on the decision making of the Board or the  
34 rights of an individual to appear before, and request relief from, the Board.

35  
36 Recording Secretary Report - Ms. Chase reported that the June 26, 2012, Meeting Agenda was properly  
37 published in the June 12, 2012 edition of the Portsmouth Herald, and, posted at the Library, Town  
38 Clerk's Office, Town Office and on the Town's website.

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40 Chair Field then briefly explained the Board's operating Rules and Procedures to those present.

41  
42 **Approval of Minutes:**

Discussion ensued regarding approval of Meeting Minutes. Mr. Lagassa suggested, and Mr. Landman agreed that non-substantive changes, such as, punctuation corrections don't need to be voted on by the Board. Mr. Landman suggested sending such corrections directly to the Recording Secretary prior to Board approval. Chair Field said that he would like to be formal about the way the Board approves the Minutes; punctuation can be important. Mr. Buber was asked to go through all of the changes made to the Recording Secretary, which he did.

- I. May 22, 2012, Regular Meeting Minutes –** Typographical errors were corrected. **Mr. Buber Moved and Mr. Landman Seconded the Motion to approve the May 22, 2012 Minutes as amended and pending Mr. Fullerton's correction of a word on line #322. The Vote was unanimous In Favor of the Motion (5-0).**

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

## **I. Unfinished Business**

**1. (Continued) #2012:01 – John Spink, 800 South Road, Rye, NH 03870. Property location: North Road Rear (land abuts Rye Town Line); M/L: 016-001-000; Zoning District: R-2.** The Applicant requests a Variance from Article IV, Section 406 for relief from the frontage requirement of 175-feet. The lot is landlocked and will access South Road in Rye, NH via a recorded Easement. **Property owner: John R. Spink, Jr., 800 South Road, Rye, NH 03870. This Case is continued from the May 22, 2012 ZBA Meeting.**

Chair Field announced, for the benefit of those in attendance for the Spink Case #2012:01, that the Application had been withdrawn by the Applicant, without prejudice, which means that the Applicant can come back before the Board at any time. He said that it was his understanding that the primary reason the Application had been withdrawn was because the land is located in both the Town of Rye and North Hampton and there are several issues pending before the Town of Rye. There was no Board Action taken.

**2. (Continued) #2012:03 – Property Owner: Glenn Martin, 11 Evergreen Drive, North Hampton, NH 03862. Applicant: Same as Owner; Property location: 9 Hampshire Drive, North Hampton, NH 03862; M/L 007-136-000; Zoning District: R-1.** The Applicant requests the following Variances: (1) Article IV, Section 409.8.a relief for a septic system setback of 70.5-feet where 75-feet is required, and (2) Article IV, Section 409.9.A.2 relief for a structure 21.4-feet from poorly drained soils where 50-feet is required. **This Case is continued from the May 22, 2012 ZBA Meeting.**

In attendance for this Application:

Glenn Martin, Owner/Applicant  
Bernard Pelech, Applicant's Counsel  
Steve Rikers, Soil Scientist, Sand Piper Environmental

Chair Field went over the documents submitted pertaining to the Case to make sure the Applicant was in agreement with the Board, because some of the information received may involve some elements which will warrant further reconsideration of prior, but pending, decisions of the Board, as the Case is still procedurally incomplete.

Chair Field said that Case #2012:03 was presented on May 22, 2012, and on May 24, 2012, there was an E-mail that indicated that the two (2) elements of the Case had preliminarily received the variances requested, however the record of the Minutes indicates that at anytime the Case is open, under Roberts Rules, at least, that anyone who voted In Favor of the matter can determine, after further evidence which has been presented, to reconsider their decisions. He said that the two (2) Variances as to which action was taken have preliminary status; they are not final decisions of this Board until the Case is complete.

Mr. Pelech said that he thought the Board approved two (2) Variances at last month's Meeting.

Chair Field said that the Case is still open and that the point he is trying to make is that any Member that voted in the affirmative and wishes to change their mind can ask for a reconsideration of those votes. He said that he thought Mr. Pelech received a copy of the E-mail communication forwarded to Ms. Chase on this matter. Mr. Pelech said he wasn't sure that he did and wanted it noted for the record of his exception to the Board, he said he thought there was a final vote and was not sure of the Chair's determination or what the basis of that is.

Chair Field said that the basis for it is, that the Case is still "open", and until the case is "closed", there may be additional information presented tonight that will cause Members to change their minds on those issues.

Mr. Pelech said that the Board did vote on two (2) variance requests, and asked if there was any information in the record stating that it was not a final vote of the Board. Chair Field said that the fact that the Case was "continued" constitutes a finding that it is still "open". Chair Field noted Mr. Pelech's objection and exception.

Chair Field noted the following information that is part of the record:

- A letter dated May 17, 2012 from the Rockingham County Conservation District ("RCCD") in response to an inquiry made by the Conservation Commission for further information on this Case.
- Report from the Conservation Commission that at their May 8, 2012 meeting they requested more information from the RCCD, received by the Board on May 17, 2012.
- A letter, dated May 23, 2012, from Chair Field, by direction of the Board, to Chair Ganotis indicated to him that there were matters being raised that were similar to what had occurred last September.
- A letter, dated September 26, 2011, from Chair Ganotis to the ZBA.
- A letter, dated May 30, 2012, from Chair Ganotis to the ZBA thanking the Board for allowing the Conservation Commission to develop more information on its response on the Case.
- A memorandum from Chair Field to the Board, dated June 18, 2012, with an attached copy of an informational article dealing with the subject "Impact Fees".
- June 26, 2012, earlier today, the Board received a considerable amount of material that was newly submitted by the Applicant, Glenn Martin.
- The information above is in addition to the original Application submitted.

Mr. Lagassa asked the Chair if the "Impact Fees" documentation that he forwarded to the Board was distributed because it was particularly relevant to the Case, or was it just generic background. Chair Field said that it was "generic background".

Chair Field clarified for the Applicant that the letter from the Conservation Commission to the Board, received by Ms. Chase on May 29<sup>th</sup>, included a letter dated May 17, 2012, which had not been received by the Conservation Commission prior to the 22<sup>nd</sup> of May.

Mr. Pelech addressed the Board on behalf the Applicant, Glenn Martin. He said that the Variance request from Article IV, Section 406.2.2 to allow 99.88-feet of frontage where 100-feet is required was granted by the Board at the May 22, 2012 Meeting, and the Variance request from Article IV, Section 406 – side yard setbacks was also granted by the Board at the May 22, 2012 Meeting. He said it was his understanding that the Board continued the two wetland variance requests pending further information from the Applicant.

Chair Field commented that much of material was submitted by the Applicant this evening and was not available to the Public. Mr. Pelech agreed.

Mr. Pelech referred to a copy of a portion of the Plan depicting where the actual building envelope would be if it met all the setback requirements, proving that there is no reasonable location to build a house without variances from the wetlands setbacks.

Mr. Pelech briefly went over the five (5) criteria of the Variance test that he initially addressed at last month's Meeting.

- There are "special conditions" to this property.
- It's a permitted use; a residential use.
- There will be no "diminution of value" to surrounding properties if the variance is granted.
- The proposal doesn't "threaten public health or safety".

Mr. Pelech referred to the material submitted this evening showing the elevation of the house and said that there will be no "mound" of earth from the leach field so they are not putting in a stonewall. He said that the elevation of the top of the leach field will be the same as Hampshire Road. He said that they were able to raise the house allowing a full walk-out basement and elimination of the "mound" from the leach field.

Ms. Breton, the septic designer, was not present. Mr. Landman had specifically asked how long the septic system compressor would remain running if there were a power outage. He said that his concern is damage to the leach field if the pump is not running for a certain length of time. Mr. Pelech said that they are designed with a battery backup, but doesn't know how long the battery would last.

Mr. Martin said that Ms. Breton stated at last month's Meeting that she did not feel that a short-time power outage would be an issue. The actual two bedroom septic tank is designed to handle up to a four bedroom house.

Mr. Buber said that the Applicant was asked, at last month's Meeting, to submit information on the following ten (10) items:

- 1. Elevation of the house showing the effect of the stonewall and the mound of the septic system in the front yard and how it might appear from across the road to the South.**

Mr. Pelech stated earlier that there will be no stonewall because the top of the leach field will be level with the road (Hampshire Road). A new elevation of the house and a revised floor plan was submitted this evening.

**2. A definitive statement that the septic system will serve only two (2) bedrooms within the house.**

Mr. Pelech said that they applied to the State for a “two-bedroom” septic and it will come back to them approved as a “two-bedroom” septic plan. Mr. Riker referred to the Effluent Disposal System plan submitted this evening; under the design notes regarding hydraulic loading it states “2 bedrooms”. Chair Field asked if it can be stated on the plan that it is limited to two bedrooms. Mr. Pelech said that they can ask for that to be done.

**3. A “septic system” plan that shows the topography and reflects approval from the RCCD presented for viewing in a larger format.**

Mr. Pelech said that the larger scaled plan submitted to the Board has been submitted to RCCD for approval, but has not been approved by them yet.

**4. Full size copy of the “1961 Plan”, so called, showing the topography of the site and be able to compare it with the septic plan that also shows the topography of the site.**

The Board was in receipt of the full size copy of the 1961 Plan as requested.

**5. Stormwater Management Plan that demonstrates how the surface water runoff will occur on the site and how the site with the construction of the basement and foundation is likely to affect the runoff from adjoining properties from both across the street and beside the house to see how water flows down into the pocket and out the culvert.**

The Board was in receipt of the Scamman report, submitted this evening, that Mr. Pelech alleged as addressing point #5.

**6. Letter to Conservation Commission. The Chair will write to the Conservation Commission inviting any comments they wish to make on this project.**

The Board received comments from the Conservation Commission, and it appears they are in limbo because they don’t have all the information they need.

**7. Ratio of amount of “impervious surface” to the lot area.**

It was estimated by the Engineer from Emanuel Engineering that the impervious surface will be 14.9%.

**7. Comprehensive plan of the “rain garden” and its cross sections. Statement and long term plan as to “construction, maintenance, and repair” of the “rain garden. Applicant has altered the Plan and will not be utilizing a “rain garden” surface water retention/control system.**

**8. 8 ½” x 11” sheet of paper sample of the material for the pervious driveway.**

The Applicant submitted information on the “grassy pavers” addressing the pervious driveway concerns.

**9. Thirteen (13) copies of all materials requested.**

The thirteen (13) copies of all materials requested were submitted just prior to the Meeting.

Mr. Buber commented that the Board received a lot of material to look at and he had hoped to have received it prior to tonight’s Meeting.

Mr. Martin apologized to the Board and said that they changed the design of the house and changed plans of using “rain gardens” to using a dry well and it took a lot of time gathering all of the information.

Chair Field referred to “Point 5” above, Storm Water Management, and said that the report submitted tonight does not respond to it. Mr. Pelech said he communicated with the Engineer that they need a stormwater management report and said that the Engineer did not have the benefit of reviewing the questions included in “Point 5”.

Mr. Landman said that he walked the property with Mr. Martin and did not see a culvert, but the land slopes down from all directions and all the water runoff from the surrounding properties flows into that wetland area.

Mr. Pelech said that the stormwater runoff goes from Mr. Martin’s lot onto Mr. Argue’s lot then goes through a culvert under Kimberly Drive and then back onto Mr. Martin’s other lot. Mr. Pelech opined that Mr. Argue’s lot is an unbuildable wet lot.

Mr. Riker went over the “stormwater plan” with the Board. He said a stormwater management plan is a plan that depicts how stormwater drains on a site. He said that stormwater management plans are site specific and do not show how water drains on surrounding lots.

Mr. Pelech said that a drainage analysis is usually required in major and very extensive acreage. He said he has never witnessed a request for a stormwater drainage study for a residential lot. He said for residential lots the basic concern to satisfy is that there will be no increase in the volume or the rate of stormwater runoff onto adjacent properties. He said that the amount of rain water will be the same no matter what is on the lot; it’s what happens to that rain water once it does fall.

Chair Field said that the major concern of the Conservation Commission is what happens to the Little River basin. He said the Board wanted a drainage analysis and that’s what the Board tried to state in “Point 5” above.

Mr. Riker said the new plan shows that pervious pavers will be used for the driveway as well as the patio that will be located in back of the house. He said a “dry well” will replace the proposed “rain gardens”. The roof gutters will collect water to and drain into down spouts led to the drywell. All of the water from the roof of the house and garage will be funneled into the dry well. The drywell will be under the patio.

Chair Field asked who would be constructing the system and building the house.

Mr. Pelech said it will be the owner of the property, whoever that may be.

Chair Field asked if Mr. Martin sold the property what certainty does the Board have that all the information received tonight along with all the representations that will accompany the property become the burden of the new owner.

Mr. Pelech said you simply make it a condition of approval that the Code Enforcement Officer would follow during the Building Permitting process.

Chair Field said that the Plan and document submitted to satisfy "Point 5" does not include the "drainage analysis" that the Board implied it wanted.

Mr. Pelech said that a "stormwater management" plan was requested, not a "drainage analysis", which are two separate and distinct things from one another and not interchangeable.

Chair Field said that it is very clear in "Point 5" what the Board wanted, although it might have not used the industry "words of art"

Attorney Pelech then stated that his presentation was complete, but that he reserved the right to rebut/respond to any new evidence received from the public.

Chair Field opened the Public Hearing to those in "Favor" of the proposal.

**David Farrell, 21 Kimberly Drive – Although not technically in Favor of the proposal, Mr. Farrell** said that at last month's Meeting there were two cases regarding this lot and the first was in regards to the lot being grandfathered and the second was for setback requirements. Chair Field said the first case was denied under the concept that the Town has the right, over a fifty (50) year period to adopt ordinances it believes are necessary to the health, safety and welfare of the community. He said that there is a culvert that can't be seen because of vegetation on Mr. Argue's lot and the vegetation would prevent silt from going into the culver. He said that there are actually four (4) culverts in the area that are not cleaned out and not functioning very well.

Chair Field then opened the Public Hearing to those who would like to offer "neutral or general information" about the proposal that the Board may find helpful in coming to a decision. There was no public comment.

Chair Field then opened the Public Hearing to those "Opposed" to the proposal.

**Michael Saal, 7 Hampshire Road –** said that he was concerned with all the material that was submitted this evening that the Abutters did not have a chance to review. He said his wife, Tamara Saal, went to the Town Office yesterday to get copies of all the new information submitted since the last Meeting so he wasn't privy to all of the new materials. He said that he is not sure what the dry wells will accomplish because there is a very high water table on the lot.

There was no further indication that members of the public wished to speak.

Chair Field "Closed" the Public Hearing.

Chair Field commented that the information received is very technical and suggested that the Board consider referring the issues that still remain in the ten (10) questions to the Conservation Commission and/or the RCCD for review.

Mr. Williams said that he would like more information on how the runoff will drain on neighboring properties and a better understanding between a stormwater management plan and a drainage study. He agreed that it would be a good idea to get a professional opinion from a third party.

Mr. Landman said that he walked the lot and the plan seems to show that water flowing on the lot is being mitigated by being absorbed by the lot and doesn't see what more the RCCD would offer. He said the water is already flowing off the other lot and into the river and it's very well vegetated there which helps in filtering the water that flows off the other properties which is a good thing. He said looking at all the drainage on all the surrounding properties is a big task and isn't sure what the Board would get out of that information.

Mr. Lagassa concurred with Mr. Landman and said that additional drainage that flows from impervious surfaces on neighboring properties is the responsibility of the people who own the neighboring property and what flows onto the property from surrounding properties is out of the control of the applicant. He said the Board is "stretching" in requiring a drainage analysis be done. He said there may be a technical question on the plan submitted as to whether they are doing it correctly that may need third-party review, and the Board can determine that. He commented on the distance of the proposed septic system being 70.5 feet from the setback where 75-feet is required and referred to a comment made by RCCD in the letter they sent to the Conservation Commission on May 17, 2012, *the impact of the wastewater disposal system on the wetlands should be negligible as an advanced pre-treatment is specified on the preliminary plan*. He said that that issue seems to be alleviated.

Mr. Buber said that the Board should be looking at the water drainage issue site specific. He said that there's nothing that the owner of the lot can do about how water drains off of other properties and into Little River. He said on the surface it appears that the Applicant has adequately addressed the drainage issues, but it would be beneficial to have an independent third-party give an analysis of what the Applicant has presented. He said it would behoove the Board to go over the materials submitted this evening.

Mr. Lagassa commented that the replacement of the "rain gardens" with a dry well may have rectified the issue.

Chair Field said that the Applicant has done an admirable job responding to the Board's questions, but has left a few unanswered, such as septic approval from RCCD, and a drainage analysis.

Chair Field asked the Board Members if they had concerns with the first two variances granted on May 22, 2012. No one from the Board had a concern with the two (2) granted Variances.

Chair Field suggested submitting the septic and drainage plans to RCCD to review for the Board.

Chair Field said the Decision Letter must be written precisely. He said the Board could assign the matter to one of the Members to craft the Decision Letter and bring back to the Board next month for approval. He said the three (3) issues are drainage, septic, and the content of the Decision Letter.

Chair Field asked if the Board wanted to provisionally approve the last two (2) Variances on the basis that the Applicant has met the burden of proof.

**Mr. Landman Moved to provisionally approve the remaining two (2) variance requests, subject to the further studies, examinations and satisfactory analysis' of the septic system and drainage plans from Rockingham County Conservation District (RCCD).**

Mr. Buber didn't think there needed to be a formal vote taken on a preliminary approval. He said that it is a Sense of the Meeting that if the Board gets satisfactory answers on the septic system plan and the water runoff plan, then the Board will probably approve the Variances. The other Members agreed.

**Mr. Landman withdrew his Motion.**

Chair Field declared that a Sense of the Meeting is that the Applicant has materially addressed the concerns that were raised at the last Meeting. There are still the septic and drainage issues and the Decision Letter, but it is the sense of the Board that it is inclined to grant the final two (2) Variances, meaning all four (4) will have been granted because of the "grandfathering" principle, and because the Applicant has met the standards under the five (5) standards, and hopefully the Board will have an answer for the Applicant at the next meeting.

Chair Field was directed by the Board to prepare and forward correspondence to the RCCD requesting "review and comment" on the outstanding issues stated above.

Attorney Pelech said that they will be at the next Meeting.

## **II. New Business**

**1. #2012:04 – Property Owners: Hobbs Farm, LLC, 11 Evergreen Drive, North Hampton, NH 03862 and Arthur Nadeau, Trust, 34 Pine Road, North Hampton, NH 03862. Applicants: Glenn Martin, 11 Evergreen Drive, North Hampton, NH 03862 and Arthur Nadeau, 34 Pine Road, North Hampton, NH 03862; Property location: 2 and 4 Elm Road, North Hampton, NH 03862; M/L 013-009 and 013-010; Zoning District: I-B/R. The Applicants request the following Variances: (1) Article IV, Section 406 – setback requirements, to allow a sideline setback of 25.5 feet where 35-feet is required for an existing structure, and (2) Article V, 501.2 to allow a change to a non-conforming lot adding 20,000 sq. ft. of lot area.**

In attendance for this Application:

Glenn Martin, Owner/Applicant

Bernard Pelech, Applicant's Counsel

Chair Field commented that he visited the property and did not see the "Notice" sign that is required to be posted on the premises, visible from the nearest street. Mr. Martin said that the "Notice" sign was nailed to the barn. Mr. Landman said he walked the site and confirmed that to be true.

Chair Field commented that there was an auction on the property and the sign reads "sold". He asked Mr. Pelech whether or not the property was still owned by Mr. Martin. Mr. Pelech said, "Absolutely".

He said that it was sold at Auction but the papers have not yet passed, and the selling of the property is contingent on this Board's actions.

Mr. Martin owns Lot 13-9 and Mr. Nadeau owns Lot 13-10; they have agreed to a lot line adjustment that would add 20,330 square feet to Lot 13-10 from Lot 13-9. Lot 13-9 would be reduced from 12.232 acres to 11.974 acres, continuing to be a conforming lot; Lot 13-10 would increase in size to 48,317 square feet from 27,987 square feet making the lot "less" non-conforming.

Mr. Pelech said that the structures on Lot 13-9 would all be conforming as to setbacks to the proposed new lot line. The existing barn located on the land to be transferred would be 25.5 feet from the proposed new lot line and thus would require a variance for side yard setback. The existing garage on Lot 13-10 currently has a rear yard setback of approximately 15 feet and that non-conforming rear yard setback would now be conforming once the lot line adjustment has been approved by the Planning Board; the Applicants are seeking to make lot 13-10 more conforming as to the rear yard setback as well as more conforming as to lot size.

Mr. Pelech addressed the five (5) criteria of the Variance test:

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

As to the addition of the 20,330 square feet of lot area, the lot line adjustment would be in the public's interest, not be contrary to the spirit and intent of the ordinance and would result in substantial justice being done. The proposal would make the non-conforming lot less non-conforming, which is the objective of any zoning ordinance.

**2. Would granting this variance be consistent with the "Spirit of the Ordinance"?**

Granting the requested variances would simply allow the relocation of the invisible lot line. It would not result in any substantial change to the characteristics of the neighborhood nor would it threaten public health, safety and welfare. The Application meets the criteria as set forth in the case of Malachy Glen v. Town of Chichester and the case of Chester Rod & Gun Club v. Town of Chester.

**3. Would "Substantial justice" be done by granting this variance?**

The hardship on the owners seeking to relocate the property line would be greater than any benefit to the general public in denying the variance. It is in the public's interest to have a more conforming Lot 13-10. No structures will change, no uses will change and there will be no site changes.

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

Granting the variances would certainly not result in any diminution in value of surrounding properties. The lot lines are invisible and there would be no visual changes to Lots 13-9 and 13-10.

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

There are special conditions with regard to the two parcels of property; Lot 13-9 is a large lot bisected by the R-1 and I-B/R zone line and Lot 13-10 is a small non-conforming lot which is approximately 1/3 the size required by the zoning ordinance. The 25.5 feet and the 35 foot setback of the Hobbs Farm

barn provides over 70 feet of open space between the two (2) structures, this is more than adequate for emergency vehicles and provides adequate light and air to both structures.

Mr. Pelech said that he believes the five (5) criteria necessary for the Board to grant the two (2) Variance requests have been met and respectfully requested that the Board grant the Variances.

Mr. Pelech explained that Mr. Nadeau's lot was non-conforming; the "use" of the lot is not non-conforming. He said that they have to go back to the Planning Board for final approval of the lot line adjustment.

Chair Field opened the Public Hearing to those who wished to speak in "Favor" of the Application.

Mr. Martin asked if the Board received the letter from Arthur Nadeau, regarding his observations, and they confirmed that they did.

**Kendall Chevelier, 287 Atlantic Avenue** – said that the Application is pretty straight forward, changing a lot line to give his sister and brother-in-law more land making their lot less non-conforming. He said that this would not result in any damage to abutting properties.

Chair Field opened the Public Hearing to those who would like to offer comment or information about the proposal but neither speak For nor Against it.

**Nicole Carrier, Rye NH** – said that she and her partner were the successful bidders at the Auction and will soon be living at Hobbs Farm. She said that they had no problem with the lot line adjustment and feels that it is a reasonable proposal.

Chair Field then invited any other comment from the public. There was none.

Chair Field then closed the Public Hearing.

The Board Members had no issues with the Variances requested.

**Mr. Lagassa Moved and Mr. Buber Seconded the Motion to approve the two (2) Variance requested and concluded that all five (5) of the points have been met regarding the two (2) Variances. The Vote was unanimous in favor of the Motion (5-0).**

**2. #2012:05 – Property Owners: Michael and Lisbeth Higgins, 136 Atlantic Avenue, North Hampton, NH 03862; Applicants: Same as Owners; Property location: 136 Atlantic Avenue, North Hampton, NH 03862; M/L 006-036-000; Zoning District: R-1.** The Applicants request a Variance to Article IV, Section 406 - setback requirements, to allow the construction of a 15'x18' deck approximately 16-feet from the rear lot line and approximately 8-feet from the side lot line where 25-feet is required for both.

In attendance for this Application:

Michael Higgins, Owner/Applicant

John Anthony Simmons, Sr., Applicant's Counsel

Mr. Simmons explained that the original application incorrectly referred to the property as being in the R-2 zone and is actually in the R-1 zone. The mistake was corrected prior to publication. *Secretary's note: the tax card incorrectly zoned the parcel as R-2.*

Mr. Simmons submitted pictures taken from the proposed deck looking out toward the adjacent lots showing how far the neighbor's houses are from the subject lot. The neighbor at 140 Atlantic Avenue has a large empty field between the properties and the neighbor at 96 Mill Road can't be seen through the dense vegetation and trees.

Mr. Simmons made reference to the plans submitted to the Board, (1) a rudimentary drawing that Mr. Simons drew out, (2) a computerized plan from the Applicant and (3) a plan drawn by Ernest Cote, a Licensed Land Surveyor.

Mr. Simmons addressed the five (5) criteria of the Variance test.

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

Neither public or private property rights will be burdened. No additional fire, police or other town services are required; it won't negatively affect public transportation or public access issues, and won't negatively affect private property rights by placing additional burdens or requirements on abutting properties.

**2. Would granting this variance be consistent with the "Spirit of the Ordinance"?**

The Spirit of the Ordinance is observed. The major purposes of the side and rear lot setbacks include the ability to ensure that there is no overcrowding during development of properties; owners are far enough away to enjoy their right to quiet enjoyment of their property, and that town services are able to service the property adequately. He said the deck has been designed conservatively and fits in with the general feel of the older home and neighborhood.

Chair Field asked if an emergency vehicle would be able to access the paved parking area. Mr. Higgins confirmed that an emergency vehicle would be able to access the property.

**3. Would "Substantial justice" be done by granting this variance?**

To meet this criterion, a proposed use must be such that any loss to the individual that is not outweighed by a gain to the general public is an injustice. There is not any loss to any individual or the public by the granting of this Variance. The benefit to the property owner is considerable and does not burden anyone else in the process.

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

The nearest building is very far away and thus will not be affected to any other manner typically associated with code enforcement/nuisance issues, including but not limited to noise or odors. The applicant has spoken to both direct abutters on his side of the tow streets and both have indicated that they do not oppose the granting to the application.

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

The house is one of the older structures in the neighborhood and, like so many homes built during its era, was located in close proximity to the lot lines... Other locations for a possible deck are neither practical nor desirable. The proposed location feeds off of the kitchen and other locations for a deck would impede access to accessory structures or the driveway. Thus if the requested relief is not granted, the literal enforcement of the ordinance would result in an unnecessary hardship on the applicant.

Mr. Buber asked if there were any wetlands on the property and Mr. Simmons said that there were no wetlands near this lot.

Mr. Higgins spoke to both direct abutters, the Scheuerles and the Seigles, as well as, Henry Marsh and they had no issues with the proposal. The Board did not have written documents from the Abutters but were comfortable taking Mr. Higgin's testimony which was given "under Oath".

Chair Field requested to look at the returned Certified Mail Receipts proving the abutters received proper notice of this Public Hearing. The Receipts appeared to be in order and supportive of the testimony.

Chair Field opened the Public Hearing to those in "Favor" of the Application.  
There was no public comment.

Chair Field opened the Public Hearing to those "Neutral" to the Case.  
There was no public comment.

Chair Field opened the Public Hearing to those "Opposed" to the Case. There was none.

Chair Field closed the Public Hearing.

It was a consensus of the Board that the Applicant met the five (5) criteria of the Variance test.

**Mr. Landman Moved and Mr. Williams Seconded the Motion to grant the Variance Request from Article IV, Section 406 for relief of the 25-foot side line setback.  
The Vote was unanimous In Favor of the Motion (5-0).**

Mr. Simmons praised the Board on their commitment to the Town and thanked them for their service.

Chair Field reminded everyone of the "30-day" appeal period.

### **III. Other Business**

#### **Motion for rehearing – Case 2012:02 – Glenn Martin; property location 9 Hampshire Road, North Hampton.**

Chair Field explained that a Notice of Decision was sent to the Applicant on May 24, 2012, that reflected the Decision made at the Public Hearing on May 22, 2012. The Request for Rehearing was received by

Ms. Chase on June 18, 2012 (within the 30-day period). The Request for Rehearing was noticed on June 20, 2012.

Chair Field said that generally a Request for Rehearing is granted if a mistake of the law, or facts not available at the time of the hearing, which warrant the introduction of those facts. He said it also gives the Board the opportunity to correct itself if it feels it made an error.

The Variance was denied. The Application stated that all elements of zoning were “grandfathered” by the fact that this was a subdivision of fifty (50) or sixty (60) years. The Board’s analysis of Henry and Murphy v. Town of Allenstown. The Board accepted the point of view that there were some issues that were “grandfathered”, as reflected in its earlier decision, but as to the entire proposal being “grandfathered” the Board rejected such interpretation.

Mr. Williams did not sit on the original case and therefore made no comment.

Mr. Landman said that he agrees with the Board’s reading of Henry and Murphy v. Town of Allenstown and has not changed his opinion on the original decision.

Mr. Lagassa did not change his opinion and said that there was no point in granting the Request for Rehearing Case 2012:02.

Mr. Buber and Chair Field concurred with the other Board Members not to rehear Case #2012:02.

**Mr. Buber Moved and Mr. Landman Seconded the Motion to Deny the Request for Rehearing - Case #2012:02.**

**The Vote passed In Favor of the Motion (4 In Favor, 0 Opposed and 1 Abstention). Mr. Williams Abstained for reasons previously stated.**

### **1. Communications/Correspondence and Miscellaneous –**

a. Report on Correspondence, dated May 17, 2012, received from the Rockingham County Conservation District by the North Hampton Conservation Commission and forwarded to Board regarding ZBA Case #2012:03. The Board discussed this correspondence previously in the Meeting.

b. Report on Correspondence, dated May 30, 2012, received from North Hampton Conservation Commission regarding ZBA Case #2012:03. The Board discussed this correspondence previously in the Meeting.

**2. Board Discussion on how to handle a review of the Rules of Procedures, individually or through a Committee.** This issue was not addressed at this Meeting and deferred for consideration.

**3. Report on “Workforce” Housing Symposium, held in Exeter, by Member Lagassa.** – Mr. Lagassa said that he attended the Workforce Housing Symposium on May 8, 2012 and those who attended went through a simulation exercise. He said that under the Workforce Housing proposals, the ability to modify the imposition of strict standards has shifted.; It’s a lot easier for an Applicant to come forward and justify a variance request or modification of standards by the Planning Board on the basis of the need for “workforce” housing; the odds are the Applicant will prevail. It would behoove the Board to

become knowledgeable about workforce housing and its laws. He had some information on workforce housing that he will give to Ms. Chase so that she can distribute it to each of the Members.

**4. Any other matters which are properly brought before the Meeting.**

Chair Field reported that the Barr-Moran Superior Court Case has been consolidated with the Little Boar's Head Village District's Case. The Board was notified that there is a request for the Judge to take a view of the signs in advance of the Hearing on the Case.

Mr. Buber asked the Chair if the letters from the RCCD and the Conservation Commission should be attached to the Meeting Minutes.

Chair Field did not think the letters needed to be made part of the Minutes; the letters are a part of the Record.

**Mr. Buber Moved and Mr. Lagassa Seconded the Motion to adjourn at 9:03 pm.  
The Vote was unanimous in favor of the Motion (5-0).**

Respectfully submitted,

Wendy V. Chase

Recording Secretary

**Approved August 28, 2012**