



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, January 22, 2013 at 6:30 pm
Town Hall, 231 Atlantic Avenue

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These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official Case Record and available for inspection at the Town Offices.

Attendance:

Members present: Robert B. Field, Jr., Chair; David Buber, Vice Chair; George Lagassa, Phelps Fullerton and Robert Landman. (5)

Members absent: None.

Alternates present: Lisa Wilson joined the Meeting shortly following acceptance of the Minutes. (1)

Administrative Staff present: The Recording Secretary was absent due to illness; the Meeting Minutes were transcribed by the Community Television video recording, and by Vice Chair Buber who was appointed by the Chair to serve as Secretary Pro Tem.

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

Chair Field Called the Meeting to Order at 6:30 p.m. and noted for the record that Mrs. Wendy Chase was absent, and confirmed the appointment of Member Buber as Secretary Pro tem.

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

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

Recording Secretary Report – Chair Field reported that the note on the Agenda made by the Recording Secretary stated that the Meeting Agenda was properly posted on January 7, 2013 at the Library, Town Clerk's Office, Town Office and on the Town's website. The Agenda was not published in the newspaper because the only Case before the Board is a "deferred" case and it had previously been properly published in the newspaper.

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.

Rules and Procedures- Waived.

I. Minutes:

Members of the Board offered minor typographical corrections to the Minutes of the Meeting of December 11, 2012. All were accepted as being immaterial in nature.

December 11, 2012 Meeting Minutes, - Mr. Landman Moved, and Mr. Lagassa Seconded, the Motion to accept the December 11, 2012, Meeting Minutes, as corrected.
The Vote was unanimous in Favor of the Motion (5-0).

Alternate Lisa Wilson joined the Meeting, and was advised of actions previously taken.

II. Unfinished Business:

Case Docket:

1. (Deferred) #2012:10 – Property Owner: Timothy C. Huff, as Trustee of the Timothy C. Huff Revocable Trust DTD 10/25/1994, 6899 Heritage Club Drive, Mason, Ohio 45040. Applicant: Same as Owner; Property location: 34A Ocean Blvd, North Hampton, NH 03862; M/L 001-075-000; Zoning District: R-2. The Applicant requests the following Variances: (1) Article IV, Section 406 – relief from the 30-foot side-yard setback by razing the existing deck already within the side-yard setback, and replacing it with a new deck and remodel to the existing house, and (2) Article V, Section 501.2 to allow an extension, expansion or change to a non-conforming use increasing the size of the building footprint. This Case is deferred from the December 11, 2012, Meeting pending receipt of additional information relating to Case jurisdiction.

Chair Field explained that Case #2012:10 has been “deferred”, not “Continued,” and that the distinction is intentional. The Board has not yet accepted jurisdiction of the Case, and the “deferral” has been with the consent of the Applicant. He further explained that the Board has been concerned with concurrent jurisdictional issues which have prevailed in the Town between Little Boar’s Head District (LBHD) and the Town for many years. The Board sought a legal opinion from Town Counsel, Matthew Serge, and it is in his opinion, dated November 21, 2012 that there is no such thing as “concurrent jurisdiction” in New Hampshire regarding zoning districts; a zoning district is created and stands independently in and of itself. The Zoning Map makes no distinction between the Town and the LBH District. However, the Tax Map does delineate the two.

Chair Field said that Board is under the impression that LBHD is seeking an opinion from their Counsel and quite possibly the Select Board is going to seek an opinion from Counsel on the same matter. In spite of inquiry made through Mrs. Chase, nothing has been reported from the LBHD Chair, Margaret Schoenberger to the Board, nor has there been any information received from the Select Board on the matter.

Mr. Buber referred to the Tax Map and explained the “vastness” of the LBH District. The Board reviewed a copy of the Tax Map depicting the outline of Little Boar’s Head Village District.

91 Mr. Lagassa referenced the research information prepared by Mr. Charles ("Chuck") Gordon, who
92 served on, and was Chair of, the LBHD Zoning Board in prior years, and said it would appear that there is
93 reference to implementation of Zoning by the Town on behalf of LBHD and part of this informal tradition
94 of working together in having "concurrent jurisdiction" may have been institutionalized in some way in
95 that language.

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97 Chair Field said that Mr. Gordon's research was very helpful as a "historical" reference/record but that,
98 in his opinion, it is not relevant to what the Board is being requested.
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100 Mr. Lagassa wondered if it were possible that LBHD had given some zoning authority to the Town. Chair
101 Field said that he didn't believe that there was any statutory authority to act in that manner, and, if that
102 were so, then there would seemingly be some reference to that action in the Zoning Ordinance. Chair
103 Field made the point that it is irregular at best for the Board to consider "ex parte" submissions made to
104 the Administrative Assistant, outside any public meeting forum, where it is not subject to normal
105 verification and testing. Mr. Gordon was not present at the Meeting to introduce and comment on his
106 effort. This is unlike his earlier appearance in October when he introduced helpful historical information
107 and perspective. It was later used in connection with the inquiry of counsel.

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109 Mr. Lagassa referred to the 1963 Zoning Ordinance Amendment that replaced the provision granting
110 LBHD exclusive zoning enforcement by its Zoning Officers under its Zoning Ordinance with the provision
111 that the Town Zoning Ordinance shall be administered for the Town including LBH by the Town Zoning
112 Officer.

113
114 Chair Field said that the LBHD Zoning Board doesn't appear to have the authority to grant such authority
115 because the State Legislature has not granted such power to it in its 1937 zoning authorization. He
116 commented that since October this Board has reached out to the LBHD Zoning Board on at least three
117 (3) occasions and they haven't yet reacted nor responded.

118
119 Mr. Fullerton opined that an Applicant should have an expedient hearing before some zoning board.
120 This Board cannot decide whether this Case is going to be resolved in a week or in a few months; the
121 Applicant deserves a time frame because it's not fair to protract a project, especially with the amount of
122 time and expense spent on preparing for a Case before the Board.

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124 Mr. Buber commented that it is not fair for an Applicant to pay Attorney fees and Application fees when
125 seeking relief from both the LBHD ZBA and the Town's ZBA. Mr. Fullerton agreed.

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127 Chair Field invited Attorney Saari to speak on the issue.

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129 Attorney Saari said that he doesn't have an opinion on the "concurrent jurisdiction" issue. He said that
130 in past practices an Applicant with property in Little Boar's Head Village District would have to apply to
131 both Zoning Boards and usually appeared before the LBHD Zoning Board first, but there is no law that
132 states that the applicant has to appear before the LBHD Zoning Board first; the only reason he applied to
133 the Town's ZBA first, on behalf of his client Timothy Huff, was because the Town has scheduled monthly
134 meetings, and the LBHD Zoning Board does not, and has a hard time gathering a quorum, especially this
135 time of year.

136
137 Chair Field said that the Board has an opinion from Counsel not to take jurisdiction of the Case.

138 Attorney Saari said that of all things to consider, the one thing the Board should listen to is the opinion

from Counsel. He said that he should probably go before the LBHD Zoning Board and if he receives relief, he will come back to the Town's ZBA for the Board to decide whether it wants to hear the Case also.

Chair Field said that he was prepared to ask the Board to vote on whether or not to take jurisdiction of the Case presented, as amended. He gave the option to Attorney Saari of withdrawing the Case and the Board would not take action on the jurisdictional issue at this time, then Attorney Saari can go to the LBHD Zoning Board and may find that he does not have to come back to the Town's ZBA if he receives relief, but that is up to Attorney Saari to decide, and, if it comes back to the Town's ZBA, then at that time it can decide whether or not to take jurisdiction of the Case.

Attorney Saari said that he has made inquiries but has received no information from the LBHD Zoning Board regarding the concurrent jurisdiction issue. Chair Field again confirmed for the record that the Town's ZBA has also made several inquiries and has received no information from the LBHD Zoning Board.

Attorney Saari said that he has filed an application with the LBHD Zoning Board but has not received a hearing date because they were waiting to hear from Legal Counsel, but he wasn't sure they even sought a legal opinion.

Attorney Saari said that, in order to move forward, he asked the Board to decide whether or not they would take jurisdiction of the Huff Case and he would go along with whatever the Board agrees to.

Mr. Lagassa said that by reading the "letter of the law" regarding the Huff Case the Board does not have jurisdiction, however there is a long history of precedent that opposes that interpretation, and asked if the precedents set in the past should "steer" the Board at this moment in time.

Chair Field said that there is no "precedent" in zoning; each case stands on its own. He explained that the law tries to correct things if they are wrong, and if past practices have gone on without statutory authority, and it was discovered to be either wrong or in error, the law suggests that it be corrected.

Regarding the "deferred" Case #2012:10 – Timothy Huff, seeking variances from Article IV, Section 406 and Article V, Section 501.2, whose property lies within the Little Boar's Head Village District, the following motion was made:

Mr. Landman Moved, and Mr. Buber Seconded, the Motion that the Board not take jurisdiction of Case #2012:10 – Timothy C. Huff.

Mr. Lagassa made a friendly amendment that the Motion made is based on the "...advice from Town Counsel Matthew Serge, in a letter to Chair Field, dated November 21, 2012..."

Mr. Landman accepted the friendly amendment.

Mr. Buber pointed out that the Motion made was not to take jurisdiction of this particular case, and asked if it was going to be for this particular Case or for any Case that comes in front of this Board from Little Boar's Head District.

Chair Field said that that question is not before the Board, so it should be limited to just Case #2012:10. He said that to come to a general conclusion without the benefit of any other information may come back to haunt the board.

Chair Field recognized Lisa Wilson, an Alternate, who was seated in the audience. She asked to speak to the Board in her capacity as a private citizen.

Lisa Wilson, 9 Runnymede Drive, who wished to speak as a private citizen, referred to the discussion on setting a precedent and asked that the Board look at the situation as “procedural” rather than a “case setting” precedent, and, because the Board has listened to cases in the past, that may be a reason to listen to them now. She also referred to the comment made that “there is nothing in the Zoning Ordinance that refers to Little Boar’s Head District”. She said that may be because Little Boar’s Head is part of North Hampton, and it doesn’t have to refer to Little Boar’s Head District because it is assumed that it is part of North Hampton.

Chair Field said that the North Hampton Zoning Ordinances encompasses the whole Town, and does not appear to acknowledge Little Boar’s Head as an independent District.

Ms. Wilson commented that there is something illogical with this whole proceeding given the fact that for so many years LBHD has operated as if it is a part of the Town and suggested the Board seek more legal opinions.

Mr. Buber said that they “don’t think Little Boar’s Head is not a part of the Town” and read from information he retrieved from the website. Rather, the Little Boar’s Head District was formed by an act of the NH Legislature in 1905 and encompasses the seaward portion of the Town of North Hampton. He also read from the Preamble of the LBH Zoning Ordinance that states the LBH District was granted the power to enact and enforce Zoning Regulations in 1937.

Mr. Landman said that he was concerned that if the Board did hear this Case it would be reversing its normal procedure where cases involving LBH are heard first in LBHD, before the Town.

Chair Field said that he is concerned that if the Board heard the Case they would be doing something that they have been advised as being unauthorized by statute and perhaps wrong.

Chair Field said that Ms. Wilson makes a good point, that there is a distinction to be made between “Case Decision” and “Procedure”, but the Board can’t perpetuate a past informal procedure that appears to be in error.

Mr. Fullerton asked if the LBH Zoning Ordinances had similar Ordinances to the Towns involving wetlands preservation and aquifer protection. He is concerned that if the LBH Zoning Board is the sole Board for hearing ZBA Applications and they don’t have regulations written in their Ordinances protecting the wetlands and aquifers then the entire Town is impacted.

Chair Field said that the Board has given the LBH Zoning Board three (3) months to examine the situation and determine what they needed to do in its best interest, so that they would have time to do it.

Mr. Buber commented that the LBH Village District could hold a Special Meeting of the District at any time and adopt the provisions of North Hampton Zoning Ordinances.

Chair Field took a roll call vote on the Motion to Deny Jurisdiction of Case 2012:10, on the advice of Counsel.

Landman, Aye; Fullerton, Aye; Lagassa, Aye; Buber, Aye; Field, Aye.

The Motion Carries (5-0).

Mr. Buber asked Attorney Saari that in his past experience if an Applicant received a denial from the LBH Zoning Board whether or not they had to go before the Town's ZBA, and he replied that they did not; if denied by LBH it ended there, and he said that the same was true for an approval, depending on the case.

The Board discussed the cost associated with the Application. Chair Field suggested, since the Board did not take jurisdiction of the case, that the Town waive the filing fees if the Applicant has to come back before the Board. The Board agreed with the suggestion. Attorney Saari expressed appreciation for the concession.

III. Other Business.

Chair Field reported that the new Town Administrator, Paul Apple, started his position last Thursday. He was last employed by the Town of Allenstown as Town Administrator. He was a unanimous selection of the Search Committee.

Chair Field reported that the Barr-Moran Superior Court Case has been resolved, and the Glenn Martin Superior Court Case has been resolved. Necessary Court filings had been made in each case.

There being no further business to come before the Meeting;

Mr. Landman Moved, and Mr. Buber Seconded, the Motion to Adjourn at 7:30 p.m.

The Vote was unanimous in Favor of the Motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Draft Minutes edited by the Vice Chair, David Buber, who served as Pro tem Secretary and Chair, Robert B. Field, Jr., for Board Approval.

Approved February 26, 2013