



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, March 26, 2013 at 6:30pm
Town Hall, 231 Atlantic Avenue**

6

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

10
11 **Attendance:**

12
13 **Member(s) present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair; George Lagassa; and,
14 Phelps Fullerton. (4)

15
16 **Member(s) absent:** Robert Landman. (1)

17
18 **Alternate(s) present:** Lisa Wilson. (1)

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

21
22 Chair Field Called the Meeting to Order at 6:30 p.m.

23
24 Chair Field acknowledged the presence of Alternate Lisa Wilson and indicated that he would formally
25 seat her in the stead of Member Landman, following Preliminary Matters and Organizational Meeting
26 Matters.

27
28 **I. Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);**
29 **Recording Secretary Report**

30
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 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the
37 Alternates who were present (as identified above).

38
39 Recording Secretary Report - Ms. Chase reported that the March 26, 2013, Meeting Agenda was
40 properly published in the March 12, 2013 edition of the Portsmouth Herald, and, posted at the Library,
41 Town Clerk's Office, Town Office and on the Town's website.

42
43 Chair Field then briefly explained the Board's operating Rules and Procedures to those present.
44

45 **Minutes:**

46

47 **Chair Field invited comment on the “draft” Minutes of the February 26, 2013 Meeting of The Board.**
48 **There were a couple of typo and spelling corrections that were noted no one of a material nature.**

49

50 **February 26, 2013 Meeting Minutes, - After discussion, the Board, on Motion duly made and seconded**

51

52 **Voted: To accept the February 26, 2013 Meeting Minutes, (3 in Favor, 0 Opposed and 1 Abstention).**
53 **Mr. Lagassa abstained because he was not present at the February 26, 2013 Meeting. Ms. Wilson did**
54 **not vote as she had not yet been formally seated.**

55

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

59

60 **II. Organizational Meeting (2013) of the Board –**

61

62 **1. Oath of Office for Newly Elected Members** – Chair Field noted that the Newly Elected Members,
63 Mr. Lagassa and Mr. Buber, had properly taken their Oath of Office, and had supplied a signed copy
64 of such Oath to him for the record.

65

66 **2. Elect a Chair; Board Action (One Year)** – Mr. Buber Moved and Mr. Fullerton Seconded the
67 Motion to Nominate Robert B. Field, Jr. as Chairman of the Board for one (1) year. The Vote passed
68 in Favor of the Motion (3 in Favor, 0 Opposed and 1 Abstention). Mr. Field Abstained.

69

70 **3. Elect a Vice Chair; Board Action (One Year)** – Mr. Field Moved and Mr. Fullerton Seconded the
71 Motion to Nominate David Buber as Vice Chairman of the Board for one (1) year. The Vote passed in
72 Favor of the Motion (3 in Favor, 0 Opposed and 1 Abstention). Mr. Buber Abstained.

73

74 **4. Appoint a Recording Secretary (Mrs. Wendy V. Chase) for the Board** – Mr. Buber Moved and Mr.
75 Fullerton Seconded the Motion to Appoint Wendy Chase as the Board’s Recording Secretary for one
76 (1) year. The Vote passed in Favor of the Motion (4-0). Ms. Chase neither accepted nor declined the
77 Appointment; however, she is continuing such function and it is one of her designated tasks in her
78 formal Job Description.

79

80 **III. Unfinished Business.**

81

82 There was no “Unfinished Business”.

83

84 **IV. New Business.**

85

86 **1. #2013:02 – Property Owners: Woodridge Properties, LLC (Christopher Bolton), 1225 River Road,**
87 **Weare, NH 03821 and Gary R. Smith, 353 Ocean Blvd., Hampton, NH 03842. Applicants: Same as**
88 **Owners; Property location: 6 and 8 Lafayette Road, North Hampton, NH and 7 Post Road, North**
89 **Hampton, NH; M/L 003-090-000, 003-091-000 and 003-092-000; Zoning District: I-B/R and R-1. The**
90 **Applicants request an Equitable Waiver to establish a lot line under the equitable waiver provision of**

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91 RSA 674:33-a, that differs from the survey of the common boundaries between the subject
92 properties.
93

94 In attendance for this Application:

95 Attorney Peter Saari, Applicants' Counsel
96 Christopher Bolton, Applicant/Owner – 6 & 8 Lafayette Road, North Hampton, NH
97 Gary Smith, Applicant/Owner – 7 Post Road, North Hampton, NH
98

99 Attorney Saari offered a brief history of the property:

- 100 • The Clark Family owned the subject properties for decades and was left to Mr. Melvin Clark who
101 sold it to BTG Property #2, LLC.
- 102 • BTG Property #2, LLC, sold 7 Post Road to Gary Smith in January 2012, and sold 6 & 8 Lafayette
103 Road to Christopher Bolton in March 2012.
- 104 • A current property boundary and building location survey was not done at the time the
105 properties were sold to Mr. Smith and Mr. Bolton. There was a partial survey done at one time
106 that just surveyed the lots; it didn't depict the buildings. Mr. Clark owned all four lots and built
107 the existing building right in the middle of them in the 1940s.
- 108 • Mr. Smith and Mr. Bolton received a rendering from the Seller outlining the "property lines"
109 when the properties were sold to them. The purchasers relied on the accuracy of Seller's
110 representations.
- 111 • Mr. Smith owns the lot in back of Mr. Bolton's building and provided for an easement so that
112 there would be room for Mr. Bolton to get around in the back of his building because they felt
113 the lot line was so close to the building.
- 114 • During a recent survey it was discovered that the lot line runs through the middle of the building
115 as well as the existing "filled in" underground pool.
- 116 • Mr. Smith and Mr. Bolton agreed to move the property lines where they had been represented
117 as having been located, along the existing fencing, and there will still be an easement to permit
118 access in back of the building.

119

120 Attorney Saari addressed the five (5) statutory criteria set forth in NH RSA 674:33-a.1 for the Equitable
121 Waiver. He explained the following:

122

- 123 • Mr. Bolton leased a portion of his property to a "boat sales" business owned by Mr.
124 Chorebanian.
- 125 • Mr. Chorebanian received conditional approval from the Planning Board for a Change of Use
126 with the condition that an updated Site Plan be completed and submitted to the Planning Board
127 for approval.
- 128 • During the surveying process, it was discovered that the building infringed 81.5 feet onto the
129 rear lot (Gary Smith's property) and a 40-foot infringement on the side, as well as, property lines
130 running through the "filled in" in-ground pool and building.

131

132 Attorney Saari said that there has been no enforcement action on the property in the last ten (10) years.
133 He confirmed this with Zoning Administrator Wendy Chase, and an inquiry was made to the Building
134 Inspector, Kevin Kelley. At the time of both sales, the Seller and Realtor of the properties, represented
135 to the buyers, the location of the property lines.

136

137 Attorney Saari testified to the following:

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- 138 • The Applicant's did inquire about the location of the property lines, and received misinformation
139 from the Seller.
- 140 • The dimensional violation only affects the two (2) Applicants, and does not constitute a public or
141 private nuisance, nor diminish the value of other property in the area.
- 142 • A solution would be to tear down the back portion of the building and the cost of correction so
143 far outweighs any public benefit to be gained, that it would be inequitable to require the
144 violation to be corrected.

145
146 The Applicants were asked to address the Board.

147
148 **Christopher Bolton, 24 Ocean Blvd, North Hampton, 03862, owner of 6 & 8 Lafayette Road, North**
149 **Hampton**, explained that he had a Purchase and Sales Agreement on the property and that he and his
150 Realtor walked the lot and it was represented to him that the property lines on Post Road ran along the
151 wooden stockade fence. He said that he did not have a survey done. The lot lines running along the
152 fence made sense; it did not make sense that the property line actually ran through the building. He and
153 Mr. Smith have agreed to move the lot lines to where they both thought they were in the first place.

154
155 **Gary Smith, 353 Ocean Blvd, Hampton, NH, 03842, owner of 7 Post Road, North Hampton**, explained
156 that he too walked the property and it was represented to him that the boundary lines ran along the
157 fencing.

158
159 In response to a question posed by the Chair, the Applicants stated that the Seller of the property had
160 not been asked by them to come to the ZBA meeting to testify directly as the factual matters involving
161 the property lines and location of structures.

162
163 Attorney Saari confirmed that the rear lot line behind the building will be 7.2 feet with a 10-foot
164 easement, totaling 17.2 feet from the building.

165
166 Mr. Fullerton asked if the building will remain on two lots; 003-090 and 003-090. He also commented
167 that the boundary line between the Zones R-1 and I-B/R is not depicted on the new survey plan.

168
169 Attorney Saari said that the lots will be combined and the new plan will be submitted to the Planning
170 Board for approval. He said that the property is not going to be subdivided. He explained that they first
171 went before the Planning Board for Site Plan Review, and then had to go to the ZBA for relief, and if
172 granted, they will go back to the Planning Board for approval of the new Site Plan.

173
174 The Board voiced concerns over the fact that surveys of the properties were not conducted at the time
175 of the sales and that the prior deeds were not properly researched. Attorney Saari said that the
176 problem is that, the properties were owned by the same owner for so many years and it was always
177 assumed that the property lines were where they thought they were.

178
179 Chair Field then invited members of the public who wished to speak "In Favor; Against; or, Offer
180 Information" to do so. There was no person present who wished to offer testimony.

181
182 Chair Field then closed the Public Hearing, and, the Board began its deliberations.

183
184 The provisions for an Equitable Waiver have two (2) alternatives. It was a general consensus of the
185 Board that the Applicants did not meet the test under RSA 674:33-a.I, but, did in fact meet the test

186 under RSA 674:33-a. II that *in lieu of the findings required by the board under subparagraphs I(a) and*
187 *(b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10*
188 *years or more, and that no enforcement action, including written notice of violation, has been*
189 *commenced against the violation during that time by the municipality or any person directly affected.*
190

191 **Mr. Buber Moved, and Mr. Lagassa Seconded, the Motion to grant the Equitable Waiver Request**
192 **under RSA 674:33-a. II for Case #2013:02, Woodridge Properties, LLC, Christopher Bolton, 6 & 8**
193 **Lafayette Road, North Hampton, and Gary Smith, 7 Post Road, North Hampton, with two (2) Special**
194 **Conditions; 1). The Property owners shall submit the Board approved Equitable Waiver, Lot Line**
195 **Adjustment Plan, dated December 28, 2012, to a continuing Site Plan Review that meets with the**
196 **complete satisfaction of the North Hampton Planning Board, and (2) neither of the two (2) lots**
197 **created by the Equitable Waiver shall be further subdivided without further review and approval of**
198 **the Zoning Board of Adjustment.**
199

200 **The Vote was unanimous in Favor of the Motion (5-0).**
201

202 Chair Field reminded the Applicants of the thirty (30) day appeal period for any interested party or
203 person to seek a Request For Rehearing.
204

205 **V. Other Business.**

206

207 **a. Discussion on the possible Appointment of Alternate Members.** – Chair Field reminded
208 the Board that two (2) Alternate members, Lisa Wilson and Jonathan Pinette, have terms that will expire
209 in May 2013. He asked the Board to consider whether the Board Members in the same Legislative cycle
210 as the Election cycle. Chair Field suggested both holding the present number of ZBA Alternates at three
211 (3) in total, because it is administratively simpler; and, to conform the terms to the newly adjusted Town
212 Election cycle which has been restored to March.
213

214 The Board discussed the posting requirements for the vacant Alternate seats. Ms. Chase pointed out
215 that the Alternate terms mirrored the Primary Member terms.
216

217 Chair Field declared a “Recess” at 7:22 p.m. to allow the Board an opportunity to conduct research of
218 the NH RSAs on the topic of making alternate appointments by an elected Board. During the recess the
219 Chair confirmed his recollection and related to the Board Members that the provisions of RSA 673:5, II.,
220 provide that an Elected Board may appoint five (5) Alternate Members for a term of three (3) years
221 each, which shall be staggered in the manner similar to that of Elected Members.
222

223 The Chair regaveled the Meeting to order at 7:27 p.m., and reported for the Meeting record the
224 statutory and procedural observations collectively and informally gleaned by him during the Recess.
225

226 The Board agreed that there was sufficient time to both publish the Public Notice of Alternate
227 Vacancies at least twenty-one (21) days before the next meeting, and to invite interested applicants to
228 attend the April 23, 2013 Regular Meeting. Both Ms. Wilson, and later, Mr. Pinette, were advised to file
229 notice of their interest in continuing as Alternates if each so desired. The Board further emphasized that
230 it was under no obligation to appoint any specific number of Alternates.
231

232 The Recording Secretary/Administrative Assistant was asked to prepare and cause to be published, as
233 prescribed by formal Board Rule and Procedure, “public notice” of the vacancies and possible
234 appointments.

235

236 **b. Correspondence to Select Board, dated March 4, 2013 from Little Boar’s Head Village**
237 **District Commissioners – Re: ““Concurrent Jurisdiction” between North Hampton ZBA and**
238 **LBHD ZBA”.** – Chair Field advised the Board that he senses the matter under discussion may represent
239 a mischaracterization and/or misunderstanding of just what “concurrent jurisdiction” means. Generally
240 such term provides that each of two (2) adjudicative Boards may be eligible to “hear” and “decide” a
241 case in controversy at the option of an initiating party. However, once a panel is chosen by the party,
242 such panel then hears and finally decides the matter. It is not decided by balancing the results
243 determined by two (2) competing panels. Chair Field refreshed the Board’s recollection that it had
244 denied jurisdiction only on the Case at issue based on the advice of counsel; and, had not yet made any
245 procedural determination of broad application.

246

247 Chair Field said that on behalf of the Board that he had been able to obtain certain records and the
248 “informal” E-Mail opinion of LBHD Commissioner’s Counsel, regarding the “concurrent jurisdiction”
249 issue. The Opinion from Counsel proved to be lacking in analytical detail and its comprehensiveness. He
250 said that he spoke by telephone with Attorney Serge and that Attorney Serge maintains the conclusions
251 set forth in his written opinion of November 21, 2012, remain sound and unchanged in his mind, and the
252 Board should continue to consider declining taking jurisdiction of Zoning Cases arising within the LBH
253 District. It was also observed that the North Hampton Zoning Ordinance currently in effect makes no
254 reference to the Little Boars Head District and the administration of LBHD zoning powers.

255

256 Attorney Serge advised Chair Field that he had also extended the scope of his opinion to include the
257 Town, and that at Select Board request he is also representing the Town on this matter. As long as the
258 interests of the Town and the ZBA remain the same there would appear to be no problem with him
259 simultaneously representing the Select Board and Zoning Board, but if the interests of the Zoning Board
260 and Select Board start to diverge or separate, there may well be a conflict. If so, Attorney Serge would
261 be asked to serve only the Zoning Board, as it has already relied on such Opinion in an administrative
262 matter decided on January 22, 2013.

263

264 Chair Field advised the Board that he had been informed about a Meeting, requested by and scheduled
265 between, the Commissioners and the Select Board on or about April 19, 2013, and that a representative
266 of the Zoning Board was invited to attend. He asked if the Board wanted to participate in the
267 discussions to take place at the meeting on April 19th or stay out of it completely. It was unclear what
268 “type” of meeting it was going to be. Ms. Chase did not know for sure if it was a Public Meeting or a
269 Non-Meeting with Counsel. Discussion ensued about standards applicable to, and character of, a “Non-
270 Meeting with Counsel, given that it appeared there would be multiple parties present and a quorum of
271 some participant panels. Ms. Chase said that she would forward technical information on “Non-Meeting
272 with Counsel” to the Board Members tomorrow.

273

274 The Board advised Chair Field to be judicious and reserved in his participation, and to keep in mind the
275 future “adjudicative” role of the Board, vis-à-vis the “legislative” role of the Select Board and LBHD
276 Commissioners. Chair Field concurred.

277

278 Member Buber noted that Chair Field had had past experience with multiple district zoning matters
279 when he had served as a Director of the Pease Development Authority. Such would appear to have value
280 to the multi-party discussion.

281
282 **Mr. Fullerton Moved, and Mr. Buber Seconded, the Motion to Appoint Chair Field to represent the**
283 **Zoning Board at the April 19, 2013 meeting between the Little Boar's Head Village District**
284 **Commissioners and the Town regarding "Concurrent Jurisdiction".**

285
286 **The Vote was Unanimous in Favor of the Motion (5-0).**

287
288 Chair Field said that he would notify the Town Administrator of the Board's determination, and
289 attend the April 19, 2013 Meeting and report back to the Board.

290
291 There was no further business to come before the Meeting.

292
293 **Mr. Lagassa Moved, and Mr. Fullerton Seconded, the Motion to Adjourn the Meeting at 7:45 p.m.**

294
295 **The Vote was unanimous in Favor of the Motion (5-0).**

296
297 **The Meeting was then Adjourned.**

298
299 Respectfully submitted,

300
301 Wendy V. Chase
302 Recording Secretary

303
304 Draft Minutes edited by the Chair, Robert B. Field, Jr., for Board Approval.

305
306 Approved April 23, 2013

307