



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, September 24, 2013 at 6:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, New Hampshire

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, or incorporated by reference, in these Minutes are a part of the official
10 Case Record and available for inspection at the Town Offices.
11

12 **Attendance:**

13
14 **Members present:** Robert B. Field, Jr., Chair; David Buber, Vice Chair; Phelps Fullerton and
15 Robert Landman. (4)

16
17 **Member(s) absent:** George Lagassa. (1)

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

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

22
23 **I. Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);**
24 **Recording Secretary Report; Minutes of Previous Meeting – August 27, 2013.**

25
26 Chair Field Called the Meeting to Order at 6:30 p.m.

27
28 Pledge of Allegiance - Chair Field invited the Board Members and those in attendance to rise for a
29 Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do
30 so and failure, neglect or inability to do so will have no bearing on the decision making of the Board or
31 the rights of an individual to appear before, and request relief from, the Board.
32

33 Chair Field explained that there was a Four (4) Member Board and advised the Applicant's Counsel,
34 Attorney Beckett of such. He stated that the Board's practice is to permit an Applicant to present a Case
35 to a "full Board" of five (5) should the Applicant desire. Attorney Beckett confirmed that he and his
36 client were aware of that fact and that Case #2013:3 would go forward as scheduled.
37

38 Chair Field seated Ms. Wilson for Mr. Lagassa, and noted that Ms. Wilson will only be participating in the
39 business portion of the Meeting; she has recused herself from Case #2013:03 due to a possible conflict
40 of interest.

41
42 Introduction of Members and Alternates - Chair Field introduced Members of the Board and the
43 Alternate(s) who were present (as identified above).

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

48
49 Recording Secretary Report - Ms. Chase reported that the September 24, 2013 Meeting Agenda was
50 properly published in the September 10, 2013 edition of the Portsmouth Herald, and, posted at the
51 Library, Town Clerk’s Office, Town Office and on the Town’s website.

52
53 Chair Field then briefly explained the Board’s operating Rules and Procedures to those present.

54
55 **Meeting of August 27, 2013** – Chair Field suggested the following amendments to the Minutes:
56 Line #225 – add “publicly publishes the schedule of monthly meetings early in the year”, and Line #229 -
57 change the date from October 22, 2013 to September 24, 2013.

58
59 **Mr. Buber Moved, and Mr. Landman Seconded, the Motion to Approve the August 27, 2013 Meeting**
60 **Minutes, as amended.**

61
62 **The Vote passed in Favor of the Motion (4 in Favor, 0 Opposed and 1 Abstention). Ms. Wilson**
63 **Abstained.**

64
65 **II. Unfinished Business:**

66
67 **1. There is no Unfinished Business before the Board.**

68
69 **III. New Business:**

70
71 **1. #2013:03 – Property Owners: Alan and Donna Perkins, 4 Dancers Image, North Hampton, NH**
72 **03862. Applicants: Same as Owners; Property location: 68 Atlantic Avenue, North Hampton,**
73 **NH 03862; M/L: 006-002-001; Zoning District: R-2.** The Applicants request the following
74 Variances: 1). Article IV, Section 409.8.A – Prohibited uses in the Wetlands Conservation District,
75 to allow a portion of the proposed septic system 31-feet from the wetlands, where 75-feet is
76 required, and, 2). Article IV, Section 409.9.B – Buffer Zone Restrictions, to allow a portion of the
77 proposed impermeable hardscapes to be 61-feet from the wetlands where 100-feet is required.

78
79 In attendance for this Application:
80 Alan Perkins, Owner/Applicant
81 Benjamin Auger, Auger Building Company, Inc.
82 Paul Connolly, P.E., Civilworks, Inc.
83 William Beckett, Applicant’s Counsel

84
85 Chair Field noted for the record that the subject property does not lie within the Little Boar’s Head
86 Village District boundaries.

87
88 Ms. Wilson recused herself from Case #2013:03, and stepped down.

89

90 The Applicant, Alan Perkins, was invited to speak and initially introduce the matter coming before the
91 Board. Mr. Perkins said that he and his wife consider themselves “caretakers” of Runnymede Farm; they
92 made a promise to the Fuller Family and the previous owners of the property, the Devenports, that as
93 long as they were able they would keep the property as an operating horse farm. He said that the
94 proposed significant improvements will be for the betterment of the environment, the abutting
95 properties and the Little River, making it safer, more environmentally conforming, and more viable. Mr.
96 Perkins said that in order to continue their mission the proposed improvements are necessary to help
97 them continue the horse farm operation at Runnymede and in compliance with “best” environmental
98 practices.

99

100 Mr. Connolly presented the Variance Application(s) and provided the following information to the Board
101 and the Public:

102

103 **A. Variance request from Article IV, Section 409.8.A.**

104

- 105 • Portions of the existing septic system are within 75-feet of the wetlands adjacent to the Little
106 River. The system is approximately eighty (80) years old and services the domestic waste from
107 the 2-bedroom apartment, kitchen and office. The 2-bedroom apartment has always been there
108 and it is imperative that a caregiver lives in the apartment in the barn to maintain the safety of
109 the horses.
- 110 • The entire existing septic and leach field is located within 100-feet of the wetlands and the
111 existing leach field is located directly adjacent to an existing drain tile located on
112 Tax Map 6, Lot 3.
- 113 • Until recently discovered, a portion (or all) of the barn floor drainage piping has discharged
114 directly into the Little River, this plumbing has been rerouted into the existing septic system so
115 that direct discharge is no longer occurring.
- 116 • The proposed septic system will move the leach field 113-feet away from the wetlands and over
117 200-feet away from the existing drain tile on Map 6 Lot 3.
- 118 • The septic system and leach field is oversized to accommodate the 300 gallons per day (gpd) for
119 domestic waste and 360 gpd for animal waste plus an extra 120 gpd for future growth (Tax Map
120 6, Lot 3 which would require an easement for an acquisition of the property to come part of the
121 subject premises; they would like to put the pipe in now before improvements to the driveway
122 and landscape) and an additional 100 gpd, just for safety; the capacity is 880 gpd.
- 123 • The stalls are lined with bedding and wood shavings and the waste is removed daily into a roll-
124 off dumpster; the dumpster is removed weekly.
- 125 • They researched the current septic systems and did not find “construction” or “operational
126 approvals” from NH DES or any other permitting authority; but they have identified the
127 locations of the septic system and leach field.
- 128 • The existing leach field, septic system and all the associated plumbing will be removed and
129 replaced with a modern and conforming system.

130

131 Mr. Connolly addressed the Variance Criteria:

132

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

134

135 Granting the Variance would not be contrary to the public interest; the drainage septic tank and pump
136 chamber are water tight and will not leak sanitary sewage. The proposed septic tank and pump
137 chamber locations are no closer to the wetlands than the existing system.

138

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

140

141 The health, safety, and general welfare of the community would be promoted by granting the Variance.
142 All aspects of the proposed septic system are improvements over the existing system. The proposed
143 system will allow for better management of domestic waste and better treatment of effluent flows.

144

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

146

147 Substantial justice will be realized through the removal of a substandard septic system that has potential
148 adverse environmental effects.

149

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

151

152 All of the proposed system is located underground and therefore cannot be seen. Mr. Connolly
153 submitted into evidence a copy of a letter from Realtor Tony Jalbert of Tate & Foss and Sotheby’s
154 International Realty. Mr. Jalbert states, “unequivocally that there will be no adverse or detrimental
155 effects on abutting property values as a result of the ZBA granting the requested Variances”.

156

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

158

159 The existing barn, built in 1923, is located between 42-feet and 100-feet from the wetlands adjacent to
160 the Little River. Anything that is considered to be done on the river side of the barn ends up being within
161 75-feet of the wetlands.

162

163 **B. Variance request from Article IV, Section 409.9.B.**

164

165 Mr. Connolly explained that the walkway and terrace will be constructed with impermeable rubberized
166 pavers and able to support the weight of the Friesian and Percheron horses that weigh up to one (1) ton,
167 or more.

168

169 Chair Field commented that when visiting the site on Friday, he was told that NH DES deemed the gravel
170 surface that is there now to be impermeable. Mr. Connolly confirmed that to be true.

171

172 Mr. Buber explained that he requested a site walk/ inspection on Friday, September 20th at 9:00 a.m. at
173 the site with Mr. Connolly, and both he and Chair Field attended. (A quorum of Members was not in
174 attendance.)

175

176 Mr. Connolly explained that there is no way to connect the barn with any type of outdoor walkway,
177 terrace or driving surface outside of the wetlands buffer zone. The proposed impervious surfaces
178 include:

179

- 80’ of 6’ wide, rubberized paver walkway (480 s.f.)

180

- 150 s.f. of rubberized paver terrace

181

- 26’ of 3’ wide stone seating wall (80 s.f.)

182

- 600 s.f. of bituminous pavement over the end of the exiting driveway.

183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230

The proposal will eliminate 5,530 s.f. of impermeable surface, but also add 1,310 s.f. of impermeable surface so overall there will be a net reduction of 4,220 s.f. of impermeable surface within the wetlands or wetlands buffer areas.

Mr. Connolly addressed the Variance Criteria:

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

The proposal is entirely in line with the Ordinance and the public interest because it includes the removal of more than four (4) times as much impermeable surface than is proposed.

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

All aspects of the subject site development proposal are consistent with this spirit and none are contrary.

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

Substantial justice is easily realized by the four fold reduction in impermeable areas and the relocation of remaining impermeable areas as far away from the resource areas as possible.

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

The proposed landscaping will bring Runnymede Farm to a more “finished” condition, in a subtle way. Mr. Connolly also referred to the letter from Realtor Tony Jalbert.

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

The 1923 barn is located entirely within the 100’ wetlands buffer zone. Anything that is contemplated relative to hardscape improvements attached to the barn is (at least partially) going to be in the buffer zone, and subject to some sort of Variance relief. There are no adverse impacts to surrounding property values, the spirit of the Town’s ordinance, and/or public interest.

Mr. Connolly said that the toilet in the office of the barn is hardly used; it was Governor Fuller’s and is more of a museum piece, but functional. It will be pumped into the tank on the south side of the barn and forwarded to the new leach field.

Mr. Connolly said that the septic design was forwarded to RCCD and “Denied” by NH DES because the pump chamber was 31’ from the wetlands instead of the required 75’, and could not be approved without a Variance. According to Mr. Connolly, Mr. Cuomo from RCCD didn’t identify any other issues with the septic design application. It is anticipated by the Applicant that NH DES will give quick approval to the new design if the requested Variances are granted. Chair Field observed that this “chicken or egg” scenario is frequently present in this type of relief request, and that in the past “approval” has been granted subject to NH DES approval.

The Board Members agreed that the Application was well prepared, and the presentation was excellent.

231 Mr. Connolly said that they presented the same Application to the Conservation Commission for its
232 review on September 10, 2013, and referred to the letter they had sent to the Zoning Board, dated
233 September 17, 2013.

234

235 Chair, Chris Ganotis requested and was invited by the Chair to speak on behalf of the Conservation
236 Commission.

237

238 Chris Ganotis, North Hampton Conservation Commission Chair – said that he was representing the
239 Conservation Commission and addressed the letter from the Commission to the Zoning Board dated
240 September 17, 2013.

241

242 Chair Field explained that as a matter of comity, the Conservation Commission is invited to review all
243 Zoning Board Applications that deal with “wetlands”.

244

245 Mr. Ganotis said that the Conservation Commission takes the position that structures and additional
246 impermeable surfaces should not be placed in wetlands and wetland buffers. However, in the instant
247 Case, The Commission Members agreed unanimously that the proposed plan for managing septic wastes
248 and effluents and surface water runoff will likely result in a significant future improvement in water
249 quality in the little River watershed. The Conservation Commission recommends that if the Board
250 approves the Variances that they include a “Special Condition” that the loam area in back of the barn
251 going towards Little River include a vegetated cover (grass).

252

253 Chair Field thanked Mr. Ganotis and the Commission Members for their review; it is important. He said
254 it helps the Zoning Board understand some of the issues they may have otherwise overlooked.

255

256 Mr. Connolly explained that the septic system is designed with both an audio and visual alarm system in
257 case of a pump failure, and the septic pump will be on the circuit with the generator. Mr. Connolly’s
258 presentation was then declared complete.

259

260 There were no members of the public wishing to speak “generally” on the Applications.

261

262 Chair Field then opened the Hearing to those who wished to speak, in “Favor” of the proposal.

263

264 Joseph Arena, 6 Dancers Image Lane – disclosed that he was a Member of the Planning Board, but was
265 speaking as a citizen, and not on behalf of the Planning Board. He said that he is an immediate abutter
266 to the subject property and believes the proposal is about as “fool proof” as you can get it and in his
267 mind it is the route to go.

268

269 No other persons wished to speak “In Favor”.

270

271 Chair Field opened the Hearing to those who wished to speak, in “Opposition” to the proposal.

272 There was no opposition.

273

274 Chair Field then closed the Public Hearing, for purposes of Board deliberation.

275

276 Mr. Landman said that he was satisfied with the Plan, and all of his questions had been answered.

277 Mr. Fullerton said it was a great presentation and thanked the Perkins, their Engineers and Landscape
278 Architects for providing a comprehensive package, making it easy for the members to follow along. He
279 also commended the work that was done on the barn.

280
281 Mr. Buber said that, although he is not a direct abutter to the property, he can see it from his house; he
282 thanked the owners for the work that they've done on the property.

283
284 Chair Field generally agreed with the comments made by the Members of the Board. He commented
285 that the septic system approval process involves Variance approvals prior to State approvals.

286

287 **Mr. Landman Moved, and Mr. Buber Seconded ,the Motion to Approve: 1. the Variance from Article**
288 **IV, Section 409.8.A to allow the proposed septic system 31-feet from the wetlands where 75-feet is**
289 **required, with the Special Condition that the Approval is subject to the approval of the proposed**
290 **septic system by NH DES.**

291

292 **The Vote was Unanimous in Favor of the Motion (4-0).**

293

294 **Mr. Landman Moved, and Mr. Buber Seconded, the Motion to Approve: 2. the Variance from Article**
295 **IV, Section 409.9.B. to allow a portion of the proposed impermeable hardscapes to be 61-feet from**
296 **the wetlands where 100-feet is required with the Special Condition that the grounds at the south end**
297 **of the barn shall be landscaped, maintained and vegetated with grass cover.**

298

299 **The Vote was Unanimous in Favor of the Motion (4-0).**

300

301 Chair Field reported the Board's Decisions and reminded the Applicants' of the thirty (30)-day Appeal
302 period.

303

304 **IV. Other Business:**

305

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

307

308 **a. Board Rules of Procedure Section 5.G. – Chair's authority to cancel a Zoning Board** 309 **Meeting –**

310

311 Chair Field explained that Ms. Chase, on her own initiative, reached out to the Local Government Center
312 and inquired about the Chair's authority to cancel a ZBA Meeting. Attorney Sanderson responded by an
313 E-mail with citations to NH RSA 91-A, the "Right to Know Law", and other RSAs and how it applies to the
314 Board's conundrum. Based on Attorney Sanderson's opinion, Chair Field concluded that pursuant to the
315 Board's established "Rules of Procedure", the Chair has the authority to cancel a ZBA Meeting if there is
316 no "New Business" or "Unfinished Business" to be addressed by the Board.

317

318 Chair Field read Attorney Sanderson's opinion into the record:

319

320 *"1. There is no statutory requirement for the zoning board of adjustment to meet monthly, unlike the*
321 *planning board which is subject to this requirement.*

322

- 323 2. *Each land use board must have rules of procedure under RSA 676:1, which your board has adopted,*
324 *and which cover how meeting [sic] are called and cancelled. That is statutory authority for the board*
325 *itself to authorize the chair to take scheduling action for meetings.*
326
327 3. *The Right to Know Law does not require that a meeting that is publicly noticed must be held; instead*
328 *it requires that no meeting may be held unless it has been noticed, or there is an emergency. See RSA 91-*
329 *A:2, II.*
330
331 4. *Posting a yearly schedule is not the entire notice that is required. Again see RSA 91-A:2, II which*
332 *requires posting the notice in two places. There are no court cases of which we are aware that deal with*
333 *the question of whether posting a yearly schedule is in fact compliance with the notice requirements of*
334 *the Right to Know Law. That is an open question under the statute. We have often said that it [sic]*
335 *something to be careful about, since land use boards often alter their schedules to deal with pressing*
336 *applications, the availability of experts for testimony, and the need to hold public hearings within*
337 *statutorily required time limits.*
338
339 5. *Therefore, we recommend that a caveat be added to any yearly schedules posted, notifying the public*
340 *of the possibility of changed dates, and that the yearly posting should not be relied upon as the required*
341 *legal postings under the Right to Know Law.*

342
343 The Board discussed adding a caveat at the end of the annual meeting schedule to the effect of *please*
344 *take note, pursuant to Section 5.G. of the Board's Rules of Procedures, the Chair has the capacity to*
345 *cancel a meeting due to lack of New and Unfinished Business; please confirm with the ZBA Administrator*
346 *of the meeting date and time."*

347
348 Chair Field said that if a Meeting is cancelled by the Chair any Member of the Board has the right to
349 request a Special Meeting be held if they have a matter that they feel needs to be addressed by the
350 Board.

351
352 Mr. Buber would like the Board to work on the "caveat" language and to add it to the "Rules of
353 Procedure".

354
355 Mr. Buber requested a copy of the E-mail from Attorney Sanderson be forwarded to him. Ms. Chase will
356 forward a copy to the entire Board.

357
358 Chair Field asked to reaffirm, by a vote of the Board, that the Rule of Procedure, Rule 5.G. is in effect,
359 and to have Ms. Chase add to the bottom of the Annual Schedule of Meeting Dates, a reference to
360 Section 5.G that explains that the Chairman has these powers.

361
362 **A Unanimous Vote of the Board (5-0) confirmed Rule Of Procedure, Rule 5.G. is in effect, with**
363 **additions explained above.** Chair Field stated that such Vote was definitive of such power and that he
364 would act in reliance thereon. Members of the Board and the Recording Secretary all concurred.

365
366 **b. Review of possible Zoning Ordinance Amendments for the 2014 March Town –**

367
368 Mr. Buber, at the last Meeting, thought he may have a proposed Zoning Ordinance amendment for the
369 Board to review, but said that he decided not to move forward with it. No other Member of the Board
370 wished to present any proposed amendment.

371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394

2. Any other business to come before the Board.

Chair Field asked Ms. Chase if there were any updates on the Little Boar’s Head jurisdictional issue. She is unaware of any updates.

Chair Field commented that Mr. Lagassa is a member of the Large Assembly Ordinance Committee as the ZBA’s representative. Mr. Wilson reported that the first meeting is scheduled for Friday, September 27, 2013 at 8:15 a.m.

VII. Adjournment:

There being no further Business to come before the Board, a Motion to Adjourn was invited.

**Mr. Landman Moved, and Mr. Buber Seconded, the Motion to Adjourn the Meeting at 8:06 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 Chair, Robert B. Field Jr., for Board approval.

Approved November 26, 2013