



**Meeting Minutes**  
**Town of North Hampton**  
**Zoning Board of Adjustment**  
**Tuesday, March 25, 2014 at 6:30pm**  
**Town Hall, 231 Atlantic Avenue**  
**North Hampton, NH 03862**

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:** David Buber, Vice Chair; Phelps Fullerton, Robert Landman and Chuck Gordon.

**Members absent:** George Lagassa.

**Alternates present:** Jonathan Pinette.

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

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

Mr. Buber Called the Meeting to Order at 6:30 p.m.

Pledge of Allegiance – Mr. Buber 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.

Mr. Buber reported the March 11, 2014 Election results of the Zoning Board members. Mr. Phelps Fullerton was re-elected, and Mr. Charles Gordon was newly elected to the Board. He congratulated Mr. Fullerton on his re-election, and welcomed Mr. Gordon to the Board. He also thanked Bob Field for his many years of service to the Town of North Hampton, not only as past member, and Chair to the ZBA, but as a member and contributor to the numerous town boards and commissions on which he served.

Mr. Buber explained the order of business:

1. Preliminary matters and minutes of previous meetings.
2. Conduct organizational meeting, pursuant to Section 3.B, of the Board's Rules of Procedure.
3. Address "Unfinished Business".
4. Address "New Business".
5. Address "Other Business".

Introduction of Members, Alternates and Staff - Mr. Buber introduced Members of the Board, the Alternates, and Staff who were present (as identified above).

Mr. Buber seated Mr. Pinette for Mr. Lagassa.

Recording Secretary Report - Ms. Chase reported that the March 25, 2014, Meeting Agenda was properly published in the March 12, 2014 edition of the Portsmouth Herald, and, posted at the Library, Town Clerk's Office, Town Office and on the Town's website.

Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Mr. Buber 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.

**Minutes of previous Meetings – February 25, 2014 (ratify March 7, 2014 Board Approval), and March 7, 2014 Special Meeting (continuation of February 25, 2014 Meeting).**

**1. February 25, 2014 – Mr. Landman moved and Mr. Pinette seconded the motion to accept the February 25, 2014 meeting minutes as ratified.**

**The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Mr. Gordon abstained.**

**2. March 7, 2014 – Mr. Buber explained that he worked with Ms. Chase on typographical corrections to the March 7, 2014. There were no substantive changes made.**

**Mr. Landman moved and Mr. Pinette seconded the motion to accept the March 7, 2014 meeting minutes as written.**

**The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Mr. Gordon abstained.**

## **II. Organizational Meeting (2014) of the Board –**

1. Oath of Office for Newly Elected Members – Mr. Fullerton and Mr. Gordon both stated that they had taken the Oath of Office, and were sworn in by the Town Clerk prior to this meeting.

2. Elect a Chair; Board Action (One Year) – Mr. Landman moved to nominate David Buber as Chairman, Mr. Fullerton seconded the motion.

The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Mr. Buber abstained.

3. Elect a Vice Chair; Board Action (One Year) – Mr. Landman moved to nominate Phelps Fullerton as Vice Chairman, Mr. Buber seconded the motion.

The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Mr. Fullerton abstained.

4. Appoint a Recording Secretary to the Board; Board Action (One Year) – Mr. Landman moved and Mr. Gordon seconded the motion to nominated Wendy Chase as Recording Secretary.

The vote was unanimous in favor of the motion (5-0).

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95 **III. Chair to recite the Preamble of the Code of Ethics.**  
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97 Chair Buber recited the Preamble of the Code of Ethics as follows: *The Town of North Hampton values*  
98 *honesty, transparency, accountability, respect and civility in the behavior of its Officials. All Town*  
99 *Officials, whether elected, appointed or hired, shall act in the best interests of the Town, shall maintain*  
100 *the highest standards of personal integrity in discharging their public duties, and shall never abuse their*  
101 *positions or powers for improper reasons or personal gain. Therefore, in order to promote and sustain an*  
102 *ethical culture it shall be the duty of all Officials to read this Code of Ethics, to familiarize themselves with*  
103 *its content, and to acknowledge this code as among the duties they accept when taking the oath of*  
104 *office.*

105 **IV. Unfinished Business:**

106 **Case Docket:**

107 **1. None.**  
108

109 **V. New Business:**

- 110 **1. Case #2014:02 – Property Owner: 22 Lafayette Road, LLC, 22 Lafayette Road, North**  
111 **Hampton, NH 03862. Applicant: Same as Owners; Property location: 22 Lafayette Road,**  
112 **North Hampton, NH 03862; M/L: 003-099-000; Zoning District: I-B/R.** The Applicant  
113 requests a ruling that no Variance is required, or a Variance from terms of Article V, Section  
114 501.2 – Non-conforming use and (2) Article III, Section 302.31 – definition of “Non-  
115 conforming use”. The Applicant has received Conditional Approval from the North Hampton  
116 Planning Board for Site Review to construct a 29.5' x 96' building addition to the existing car  
117 wash structure. Planning Board Condition #4 states: Applicant shall submit to the Planning  
118 Board a communication from the ZBA that verifies that they either received a Variance as  
119 required by the ZBA, or that the ZBA has ruled no Variance is required for this application as  
120 it relates to Article V, Section 501.2 and Article III, Section 302.31.  
121

122 In attendance for this application:

123 Stephen Ells of Holmes & Ells, PLLC, Applicant's Counsel  
124 Jeffrey Eiras, Owner/Applicant  
125

126 Chair Buber asked that the Board Members refrain from questions and comments until after the  
127 Applicant completes his presentation.  
128

129 Mr. Fullerton read the Case description into the record.  
130

131 Attorney Ells explained that his client, Mr. Eiras, went before the Planning Board for a Site Plan Review  
132 for a proposed addition to his existing car wash in 2006; the Board found the application to be  
133 incomplete because the applicant needed a variance because the proposal was a change of a non-  
134 conforming use. Mr. Eiras went to the ZBA seeking a variance to no particular Zoning Ordinance Article  
135 or Section. The Zoning Board ruled that the Planning Board's concern was an additional use on a non-  
136 conforming lot. The Zoning Board ruled that to the extent of Article IV, Section 406.2, and Article V,  
137 Section 501.5, the Applicant met the requirements. Mr. Eiras received Planning Board approval for the  
138 proposed addition, but did not build it, and the approval lapsed. Mr. Eiras recently appeared before the  
139 Planning Board for a Site Plan Review for a proposed addition on the same building but on the other

side. The Planning Board granted conditional approval. Mr. Eiras is before the Zoning Board to satisfy Planning Board Condition #4 – *Applicant shall submit to the Planning Board a communication from the ZBA that verifies that they either received a Variance as required by the ZBA, or that the ZBA has ruled no Variance is required for the (Site Plan Application) as it relates to Article V, Section 501.2 and Article III, Section 302.31.*

Attorney Ells said that the subject lot is slightly less than (2) two acres making it a non-conforming lot, but the proposed addition meets current zoning. He referred to Article V, Section 501.5 under non-conforming uses, *Structures on a lot that is non-conforming because it does not meet the existing dimensional requirements for frontage and/or lot size can be expanded if the expansion meets current zoning.* He said that if the Zoning Board determines a Variance is not needed, the Zoning Board minutes would reflect that ruling and satisfy Condition #4 of the Planning Board's Conditional approval; If the Zoning Board determines a Variance or Variances are required, he has requested those Variances and is prepared to address them. Attorney Ells said that the Planning Board Chair did refer to Section 501.5, but it didn't go anywhere for whatever reason.

Chair Buber opened the discussion to the Board Members for any comments or questions they may have of the Applicant or his Representative.

Mr. Landman said that the proposal would not make the lot more conforming. The proposal is expanding a non-conforming use by providing more space with an additional building.

Mr. Pinette had no questions or comment.

Mr. Gordon said that he agrees with the Applicant that the proposed expansion is clearly a permitted use pursuant to Section 501.5. He said the Planning Board focused on Section 501.2. He said that it is not a prohibited use; the only reason it is considered non-conforming is because the lot is less than (2) two acres. He said that he suspects a lot of businesses along Route 1 are on lots less than (2) two acres and that is probably why Section 501.5 was added. He said the expansion meets the setback requirements, as the Circuit Rider, Jenn Rowden pointed out at the Planning Board meeting, and felt that the matter should not have been sent to the Zoning Board.

Mr. Fullerton referred to Section 501.2 that references "a non-conforming use may be continued, but may not be extended or expanded..." and Section 501.5 states, "structures on a lot that is non-conforming..." that provision is assuming that the "use" is conforming. If you have a conforming use on a lot, but the lot is nonconforming, it then allows you to expand that conforming use, and 501.2 states "a non-conforming use", and seems to use a different standard. He referred to Section 403 and the chart of Permitted Uses and Special Exceptions. The proposed use is not a Permitted Use, it falls under Special Exception, number 11, Motor-Vehicle Service Facilities. Mr. Fullerton then referred to Section 406.2.2, "Any lot of record existing on March 5, 1974 may be used for the erection of a structure for a purpose that conforms to the use regulations of the district in which it is located even though the lot does not meet the minimum area requirements for said district". He said that he doesn't believe the Applicant needs a Variance, but he may need a Special Exception.

Mr. Eiras stated that the car wash was built in 1971 by the Barkers, who currently own Wayne's Auto Body, Unit #2. They sold it to Frank Ditommaso, and Mr. Eiras bought it from Mr. Ditommaso.

Chair Buber commented that there were no other Parties present other than the Applicant and his Representative. There are no “neutral parties” or “opposed parties” to be heard from regarding the Case. He asked each member if they had any more questions of the Applicant. Mr. Gordon had no more questions of the Applicant.

Mr. Fullerton had no more questions of the Applicant.

Mr. Landman voiced concern over stormwater runoff and the amount of paved area on the lot. He asked if the “pervious” vs. “non-pervious”, in the I-B/R District is an issue that the ZBA needs to address.

Chair Buber said that the issue the Board is adjudicating is whether the Applicant needs Variances or not.

Mr. Pinette had no more questions of the Applicant.

Chair Buber closed the Public Hearing at 7:06 p.m.

Chair Buber noted the date the car wash was built, 1971, and said that in his opinion it is a “grandfathered” operation. He said if it were not “grandfathered” it would need a Special Exception, not a Variance. He said that in his view the only thing that is non-conforming is the lot size, and doesn’t believe Section 501.2 to be applicable to his Case. He looked at Section 302.31 – the definition of Non-conforming use, and doesn’t believe it to be applicable to this Case. He does believe that Section 501.5, “structures on a lot that is non-conforming, because it does not meet the existing dimensional requirements for frontage and/or lot size can be expanded if the expansion meets current zoning” is applicable to this Case. He said that, it is his opinion, that Variances are not required.

Mr. Gordon agreed with Chair Buber for the same reasons.

Mr. Fullerton said that he is having a hard time reconciling Section 501.2 and 501.5; they seem to mean diametrically opposed things, unless one was speaking to “non-conforming uses” and the other was speaking to “conforming uses”.

Mr. Gordon said that, in his opinion, what was intended by the draftsman was to make Section 501.5 a condition for Section 501.2.

Mr. Landman referred to Section 414.5.H of the Water Resources and Aquifer Protection Ordinance. He said that he disagreed with the Chair, and that the Board does have to consider water runoff on the property. He said that they are proposing to put a building on a grassy area.

Mr. Gordon said that Mr. Landman’s concerns might be relevant if a Variance were being required. If a Variance is not required then that issue would be handled under the purview of the Planning Board through a Site Plan Review process.

Mr. Fullerton said that the operation was in existence prior to the definition of “Non-Conforming Use” and because of that he has changed his view and can see it as a “non-conforming use”. He said that he never believed a Variance was required; he questioned whether or not a Special Exception was required.

**Chair Buber directed all those in favor of the Applicant not needing a Variance or Variances, as requested of the Zoning Board for Case #2014:02, to signify by saying Aye, and raising their right hand. The vote was unanimous in favor that no variances are needed (5-0).**

Attorney Ells withdrew his Variance Requests. He thanked the Board, and said he was impressed with the Board's thoroughness of the Application.

Chair Buber reminded the Applicant of the 30-day appeal period.

#### **VI. Other Business:**

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

**(a). Zoning Board of Adjustment Alternates:** Attention to Appointment of Alternates in accordance with Public Notice posted/published by the Board on or about March 25, 2014. Applications must be filed by any interested persons on or before Friday, April 18, 2014. The Zoning Board of Adjustment reserves full discretion as to whether or not to make appointments, and to determine the number, if any.

Chair Buber stated that the Board currently has two Alternate Members with terms that expire in 2016, Jonathan Pinette and Lisa Wilson. Dennis Williams' term expires in 2014. Mr. Williams was not present and the Board wasn't certain if he was interested in being reappointed by the Board. Mr. Williams may remain an Alternate until he is re-appointed, or someone else is appointed in his stead.

Chair Buber directed Ms. Chase to publish the Alternate Vacancy notice, and the Board will review any letters of interest they may receive at the April 22, 2014 meeting.

There was no other business before the Board.

**Mr. Landman moved and Mr. Gordon seconded the motion to adjourn at 7:35 p.m.  
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase  
Recording Secretary

Approved May 27, 2014