



**Meeting Minutes**  
**Town of North Hampton**  
**Zoning Board of Adjustment**  
**Tuesday, November 28, 2017 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.

**In attendance:** George Lagassa, Chair; Mark Janos, Vice Chair; Member David Buchanan; Alternate Member Robin Reid; and Recording Secretary Rick Milner.

**I. Preliminary Matters.**

Chair Lagassa called the meeting to order at 6:35 pm.

Mr. Lagassa announced that the Board consisted of only four members. He offered both applicants the option of postponing the case until a later date when a full five member Board was present or proceeding with the case at the present time.

Attorney Peter Saari stated that applicant Ernest DelleDonne wished to proceed with the case at the present time.

Attorney Christopher Mulligan stated that applicant 28 Cedar Road, LLC wished to proceed with the case at the present time.

Ms. Reid was seated for Mr. Pinette.

Mr. Lagassa presented the minutes of the October 24, 2017 meeting.

**Mr. Buchanan moved that the ZBA accept the minutes of the October 24, 2017 meeting as written. Second by Mr. Janos. The vote was unanimous in favor of the motion (4-0).**

Mr. Lagassa presented the 2018 ZBA meeting schedule calendar.

**Mr. Janos moved that the ZBA approve the 2018 ZBA meeting schedule as presented with the December meeting date to be scheduled on December 12, 2018. Second by Mr. Buchanan. The vote was unanimous in favor of the motion (4-0).**

Mr. Lagassa asked the Board for guidance on alternate membership for the ZBA. The Board came to a consensus without objection that it was currently seeking to fill one alternate member position unless circumstances create a need for more alternate members.

All potential witnesses for Cases #17:09 and #17:10 were sworn in.

**II. New Business.**

**A. Case #17:09 – Applicant: Ernest DelleDonne, 104 Lafayette Road, North Hampton, NH 03862.** The Applicant requests a variance from Section 406.8 of the Town of North Hampton Zoning Ordinance to allow a residential use prohibited by the zoning ordinance. Property Owner: 106 Lafayette Road, LLC, 104-106 Lafayette Road, North Hampton, NH 03862; Property Location: 104 Lafayette Road; M/L: 013-026-000; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

Ernest DelleDonne and Bethany Morse, applicants; Peter Saari, attorney for the applicants.

Mr. Saari addressed the Board. Mr. Saari stated that the purpose of the variance request was to allow Ms. Morse to use the first floor of the former barber shop/office building for her skin care studio business and use the second floor as her residence. Since the second floor was previously used for a business, the residential use is not allowed by Section 406.8 of the zoning ordinance.

The property contains 3.8 acres and contains two other buildings which are presently used for commercial business purposes. The former barber shop/office building has been vacant for nearly two years. It has been difficult to find a commercial business tenant due to the current market for commercial rental space. The proposed mixed use can be accomplished with little or no changes. The skin care business will present a low impact on the neighborhood. Due to the one-on-one, appointment based nature of the business, traffic volume will be low. There will be no overburdening use of the site or excessive parking. One person will mainly be using the building and the immediate area.

Mr. Saari addressed the five criteria for granting a variance identified in the State of NH RSA's.

1. The proposed residential use would be in the public interest because it would not change the character of the neighborhood in any material way. The proposed mixed use can be accomplished with little or no changes. The skin care business will present a low impact on the neighborhood. Due to the one-on-one, appointment based nature of the business, traffic volume will be low. There will be no overburdening use of the site or excessive parking. One person will mainly be using the building and the immediate area.

2. The spirit and intent of the zoning ordinance is satisfied since both the residential and businesses uses are allowed in the Industrial-Business/Residential (I-B/R) zone. The stated zoning ordinance purpose of encouraging business growth and providing a safe, healthy, and quiet environment for the residences surrounding the area is satisfied by the combined low impact residential and business uses.

3. Substantial justice would be done by the granting of the variance in that the property owner would benefit from being able to rent the property. The Town would benefit from not having the possibility of problems associated with a vacant building.

4. The values of surrounding properties would not be diminished since the proposed uses are consistent with the wide range of ongoing uses in the area. The proposed residential and business uses would not generate disruptive traffic, noise, or odors. The proposed use would be less noticeable than past uses or other allowable commercial uses.

5. The property is unique in that it contains multiple buildings and uses on a relatively large lot amongst other lots that also contain a wide range of uses. The former barber shop/office building is poorly laid out and too close to the road for an exclusively residential use. The building is also not compatible with

95 the commercial uses on the lot. The building needs many modifications to be compatible with many  
96 commercial business uses; making the building difficult to rent to commercial clients. The proposed  
97 mixed use is reasonable.

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99 Mr. Lagassa asked for public comments. No comments were made.

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101 Mr. Lagassa asked if Ms. Morse would be living alone.

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103 Ms. Morse replied that she would have a roommate.

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105 Mr. Buchanan asked how many employees would work at the business location.

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107 Ms. Morse stated that she would be the only worker.

108  
109 Mr. Lagassa asked why it is necessary for Ms. Morse to live at the proposed location.

110  
111 Ms. Morse stated that the location would provide lower costs and personal flexibility.

112  
113 David Choate, a rental real estate broker for the site, addressed the Board. Mr. Choate stated that  
114 the option of a live-in tenant for this building would benefit the Town as well as the property owner. A  
115 mostly around the clock caretaker of the building site could prevent unwanted access to the site during  
116 night time hours.

117  
118 Mr. DelleDonne addressed the Board. Mr. DelleDonne explained the history of the site. Mr. DelleDonne  
119 also expressed his interest in leasing to a client that would provide benefits to both himself and the  
120 community. The proposed uses have the least impact on the neighborhood than any other type of  
121 allowed commercial uses that could exist on the site.

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123 Mr. Lagassa suggested that any variance approval could be conditional upon only a certain type of low  
124 impact business using the first floor space.

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126 Mr. Lagassa closed the public hearing at 7:20pm. Mr. Lagassa suggested that the Board consider each of  
127 the five variance criteria.

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129 Mr. Buchanan stated that he was in favor of granting a variance for this case.

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131 Mr. Janos stated that the I-B/R zone does allow for both business and residential uses. He is in favor of  
132 granting the variance due to the mixed use nature of the neighborhood and the residential look of the  
133 existing building construction. Mr. Janos further suggested that a condition be added to any approval  
134 which states that the business proposed in the application be the only business allowed in the former  
135 barber shop/office building. If there was ever a change to the business or tenant in this building, then  
136 the property owner would be required to re-apply to the ZBA for relief.

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138 Ms. Reid stated that she agreed with Mr. Janos' suggested condition.

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140 **Mr. Janos moved that the Zoning Board of Adjustment grant a variance from Section 406.8 of the**  
141 **Town of North Hampton Zoning Ordinance to allow a residential use prohibited by the zoning**

ordinance for property located at 104 Lafayette Road as represented in the application presented to the Board subject to the following conditions:

1. The business and tenant detailed in the application is the only business/tenant to be allowed on the first floor of the mixed use building at this location. In the event that there is a change of business/tenant, the property owner is required to apply to the Zoning Board of Adjustment for relief from the provisions of the Town of North Hampton Zoning Ordinance.

2. All federal, state, and local permits and approvals are obtained by the applicant.

Second by Ms. Reid. The vote was unanimous in favor of the motion (4-0).

**B. Case #17:10 – Applicant: 28 Cedar Road, LLC, 17 Lafayette Road, North Hampton, NH 03862.** The Applicant requests variances from Section 406.8 and Section 405.3.2 of the Town of North Hampton Zoning Ordinance to allow a residential use prohibited by the zoning ordinance. Property Owner: 28 Cedar Road, LLC, 17 Lafayette Road, North Hampton, NH 03862; Property Location: 28 Cedar Road; M/L: 007-050-000; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

Andrew Janiak, facilities manager for the applicant; Christopher Mulligan, attorney for the applicant.

Mr. Mulligan addressed the Board. Mr. Mulligan explained that two separate buildings exist on the nearly three acre property at 28 Cedar Road. There is an existing commercial building in the middle of the lot to which no changes in use are proposed. This building is used as an aircraft hangar and an office on the second floor. There is an existing three unit office building closer to the front of the lot. The three unit building has not been fully rented since 2003. The applicant wishes to convert the three unit office space into two residential dwellings. The property is in the I-B/R zone. Because the three unit building is not presently used for residential purposes, the applicant requires a variance from Section 406.8 of the zoning ordinance. Because the proposed configuration of the two dwelling units would not meet the zoning ordinance's definition of a duplex, a variance from Section 405.3.2 is required to permit a multi-family dwelling.

Mr. Mulligan further explained that the property is bounded by the railroad corridor on the south side and the airfield on the north side. The lot remains heavily wooded in places. No exterior modification to the building is proposed. The applicant anticipates converting the building to residential uses in phases as the existing commercial lease expires. The two residential units would each be approximately 1,000 square feet in area. It has been difficult to obtain business tenants. The residential tenant market is stronger.

Mr. Mulligan addressed the five criteria for granting a variance identified in the State of NH RSA's.

1. and 2. If granted, the variance will not be contrary to the public interest nor the spirit and intent of the zoning ordinance. There will be no exterior change to the existing building. The property is large and well buffered with existing trees and vegetation. There is adequate space and parking on the three acre parcel.

3. It is substantially just to allow a property owner the reasonable use of its property. Residential uses similar to the applicant's proposal, such as single family homes, duplexes, and manufactured homes, are permitted in this zoning district under certain circumstances. The office uses otherwise permitted in the zoning district have resulted in persistent vacancy on the site. The relatively remote location of the property does make the location attractive to potential business customers. There is no gain to the public to deny the variance.

190  
191 4. Surrounding properties will not be negatively affected in any way by the granting of the variance.  
192 There will be no exterior change to the building. The residential use will produce a minimal increase in  
193 residential density and minimal activity on the site.  
194

195 5. The property is unique in that it is a large, heavily wooded lot bordered by the railroad corridor and  
196 the airfield which should alleviate overcrowding concerns. The use is reasonable in that similar  
197 residential uses are contemplated within this zoning district. The purpose of the prohibition against  
198 conversion of business use to residential use in the I-B/R zone is presumably to prevent human  
199 habitation in close proximity to incompatible and potentially unhealthy commercial uses. Such concerns  
200 are not present with this property. There is no fair and substantial relationship between the purposes of  
201 the zoning ordinance and their application to this property.  
202

203 Mr. Janos asked if there was any intent to make the units into condominiums.  
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205 Mr. Mulligan stated that there was no intent to create condominiums or separate ownership of units on  
206 the property.  
207

208 Mr. Lagassa asked if there were any public comments. No comments were made. Mr. Lagassa closed the  
209 public hearing at 7:46pm.  
210

211 Mr. Lagassa stated his opinion that the original intent of Section 406.8 of the zoning ordinance was to  
212 maintain the amount of available commercial property in North Hampton since the amount was limited;  
213 thereby relieving residential property owners of a greater or increased tax burden.  
214

215 Mr. Buchanan stated that the addition of more affordable housing as proposed in this application is a  
216 positive for the town.  
217

218 Ms. Reid stated that the size of the lot, if vacant, would only allow for a single home. Having two  
219 residential units on a three acre lot where the regulations would require four acres for two homes is not  
220 in the spirit of the zoning ordinance or the Master Plan.  
221

222 Mr. Janos stated that, even though it is important to provide additional affordable housing stock in a  
223 community, a zoning variance is not the appropriate mechanism to address the situation. The proposed  
224 size and amount of residential units in the application may be an overreach by the applicant.  
225

226 Mr. Lagassa stated that consideration of the financial profitability of the site as a hardship does not  
227 necessarily satisfy the State of NH RSA criteria.  
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229 Mr. Buchanan stated that the property has unique characteristics that would allow the granting of a  
230 variance.  
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232 Mr. Mulligan requested that the public hearing be re-opened in order for the applicant to respond to the  
233 Board's comments. Mr. Lagassa re-opened the public hearing at 8:03pm.  
234

235 Mr. Mulligan stated that the applicant was willing to amend its application to keep the existing office  
236 space on the first floor of the building and have only one residential unit on the second floor of the  
237 building.

238 Mr. Janos stated that amending the application would require re-submittal of revised application  
239 materials to the Board for consideration at a future meeting.  
240

241 Mr. Lagassa asked the applicant if it had any objection to continuing consideration of the case to the  
242 next meeting date.  
243

244 Mr. Mulligan stated that the applicant had no objection to a continuation of the case.  
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246 **Mr. Janos moved that the ZBA continue Case #17:10 to the December 13, 2017 meeting date. Second**  
247 **by Mr. Buchanan. The vote was unanimous in favor of the motion (4-0).**  
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249 **Mr. Janos moved to adjourn the meeting at 8:10pm. Second by Ms. Reid. The vote was unanimous in**  
250 **favor of the motion (4-0).**  
251

252 Respectfully submitted,  
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256 Rick Milner  
257 Recording Secretary