



**Meeting Minutes**  
**Town of North Hampton**  
**Zoning Board of Adjustment**  
**Tuesday, July 23, 2019 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:** Mark Janos, Chair; Jonathan Pinette, Vice Chair; Members Joseph Bernardo, David Buchanan, and Robin Reid; and Recording Secretary Rick Milner.

**I. Preliminary Matters.**

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

Mr. Janos presented the minutes of the March 26, 2019 meeting.

**Mr. Pinette moved that the ZBA accept the minutes of the March 26, 2019 meeting as written. Second by Ms. Reid. The vote was 4-0-1 in favor of the motion with Mr. Bernardo abstaining.**

**II. New Business.**

**A. Case #19:02 – Applicant: Leo J. Crotty, Jr., 216 Lafayette Road, North Hampton, NH 03862.** The Applicant requests a variance from the Town of North Hampton Zoning Ordinance, Aquifer Protection District Ordinance Section 503.6.C - Hydrogeologic Study, to not require submittal of a hydrogeologic study associated with development for a site within the Aquifer Protection District. Property Owner: Leo J. Crotty, Jr., 216 Lafayette Road, North Hampton, NH 03862. Property Location: 216 Lafayette Road, North Hampton, NH 03862; M/L: 021-028-001; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

Henry Boyd, engineer; James Scully, attorney.

Henry Boyd and James Scully were sworn in.

Mr. Boyd addressed the Board. Mr. Boyd stated that the business located on the 216 Lafayette Road property makes special products such as lighter weight, stronger parts and fabrics for aircraft, ships, and other structures. Mr. Boyd further stated that the applicant intended to construct two building additions on the property at 216 Lafayette Road with a tubular frame and special fabric skin. The proposed addition on the existing rear building on the property would be used for office storage space. The proposed addition on the existing middle building on the property would be used to shelter a non-operational Chinook helicopter for display and product presentation purposes for aviation clients.

Mr. Boyd stated that the justification for the requested variance relief to not require submittal of a hydrogeologic study associated with development for a site within the Aquifer Protection District was that the 216 Lafayette Road property abutted the Coakley Landfill superfund site for which groundwater

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quality is continually monitored by the federal government. Mr. Boyd stated that he is not sure if the aquifer in this area was used as a source for the Town's drinking water. He believes other aquifer areas are used as the Town's source for drinking water. Mr. Boyd also stated the following opinions regarding justification for the applicant's variance request:

- a. There is little that this site will do with regards to contaminating the water.
- b. The proposed development will provide some stormwater treatment where no treatment currently exists.
- c. The wetlands, on and abutting the property, were created by man-made excavation many years ago.
- d. The wetlands have low functional value as actual wetlands.
- e. It is unfair to require the applicant to submit a hydrogeologic study when the aquifer is already highly scrutinized by Coakley Landfill monitoring.

Mr. Bernardo asked if there were any chemicals stored on the site.

Mr. Boyd responded that there are no chemicals stored on the site.

Ms. Reid asked why the applicant believed that the submittal of the hydrogeologic study was not necessary.

Mr. Boyd responded that the purpose of the zoning ordinance is to protect the aquifer and the drinking water from uses that could harm the drinking water. This plan has a benign use. There is no potential contamination or negative impact on the aquifer created by the proposed development. It is better to have the stormwater treatment features proposed by the development than to do nothing. Testing is already being done in the area.

Mr. Buchanan stated that the monitoring being done for the Coakley site is not monitoring what is happening on the 216 Lafayette Road site and the potential contamination that the 216 Lafayette Road site's uses may create. The Coakley site testing is monitoring what kind of contamination that the Coakley site may or may not be producing. The Coakley testing does not have a connection to activities that may occur on the 216 Lafayette Road site. The hydrogeologic study would give results for what effect the specific uses and proposed development on the 216 Lafayette Road site would have on the aquifer.

Mr. Scully addressed the Board. Mr. Scully read excerpts from the background, authority, and purpose sections of the Aquifer Protection District Ordinance. Mr. Scully stated that the applicant is attempting to achieve the purpose of the ordinance by improving stormwater treatment features for the site that will protect the aquifer and the health of the residents. Also, the property sits on an inactive aquifer from which water is not currently drawn.

Mr. Boyd stated that the applicant would be requesting a variance even if the Coakley issue did not exist because he does not believe that the proposed development causes any harm.

Mr. Buchanan asked if the issue with submitting a hydrogeologic study was a time issue or a cost issue.

Mr. Boyd responded that the submittal of a hydrogeologic study was a cost issue because it is not necessary in his opinion. The study will not provide any helpful information to the Town.

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Mr. Bernardo asked if there was any manufacturing occurring on the site or any materials stored on the site that required Material Safety Data Sheets (MSDS) be kept on site.

Mr. Boyd responded that he did not believe any manufacturing occurred on the site or MSDS eligible materials are stored on the site. The business is a design facility.

Mr. Bernardo asked Mr. Milner for clarification regarding the purpose of the hydrogeologic study.

Mr. Milner explained that the hydrogeologic study provides an independent, professional evaluation of how the proposed development and the proposed uses may or may not impact the aquifer with potentially polluting substances.

Mr. Bernardo asked if the variance request is not granted would the applicant not proceed with the proposed development.

Mr. Boyd stated that the applicant would still proceed with development if the variance request was not granted.

Ms. Reid asked if the applicant would re-design the plan if any possible negative impacts were found by a hydrogeologic study.

Mr. Boyd stated that the plan design, in his opinion, already takes into account whatever a hydrogeologic study may reveal.

Mr. Janos asked if the Conservation Commission had reviewed the proposed plan.

Mr. Milner read a letter from the Conservation Commission recommending that the following items be addressed:

- a. capacity and effectiveness of the existing septic system,
- b. water quality within the wetlands buffer, and
- c. effectiveness of the drainage and stormwater management plan.

Mr. Bernardo stated that no scientific proof or hydrogeologic expert opinion has been presented that shows that the hydrogeologic study should not be done. It is prudent to know what may or may not happen to the aquifer as a result of the proposed development and the proposed uses.

Mr. Janos stated that the purpose of the aquifer zoning ordinance and its requirement for a hydrogeologic study is to make sure that other developments or activities do not pollute the aquifer as the Coakley site has done. It is a coincidence that the 216 Lafayette Road property abuts the Coakley site. The fact that the 216 Lafayette Road property abuts the Coakley site does not eliminate the need to perform the hydrogeologic study.

Mr. Bernardo stated that the hydrogeologic study is important to protect other abutters from any potentially polluting substances which may be created by the proposed development.

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

1. The variance will not be contrary to the public interest because it allows a good and reasonable use of the property. It also addresses stormwater concerns that currently exist unmitigated.

2. The spirit of the ordinance is observed. The project not only treats stormwater generated by the proposed impervious area, it handles additional impervious area that is currently untreated.

3. Substantial justice is done because it allows a great use of the property while taking care of stormwater which is the reason for the ordinance.

4. The values of surrounding properties are not diminished. The project will have no impact on the values of surrounding properties and is not even visible from the street.

5. Literal enforcement of provisions of this ordinance would result in an unnecessary hardship. No fair and substantial relationship exists between the public purpose of the hydrogeologic study requirement and the application. The request is more than reasonable, whereas the proposal mitigates stormwater from proposed sealed area as well as some of the existing sealed surface that is currently untreated. This provides for an improvement over the existing condition and is an improvement to the environment which is the purpose of the ordinance. Furthermore, it is patently unfair to require this study when the parcel abuts the Coakley Landfill which is constantly under monitoring from hydrogeologic studies.

Mr. Janos closed the public hearing at 7:34pm.

Mr. Pinette stated that there is no evidence as to what may or may not occur to the aquifer as a result of the proposed development or the proposed uses. The hydrogeologic study should be done to ensure that the public health is protected.

Mr. Bernardo restated his opinion that no scientific proof or hydrogeologic expert opinion has been presented that shows that the hydrogeologic study should not be done.

Mr. Buchanan stated that the applicant has proposed substantial stormwater drainage engineering which should mitigate any issues. He also understands the applicant's reasoning that the hydrogeologic study may be redundant due to the 216 Lafayette Road site's close proximity to the Coakley site.

Ms. Reid stated that it is important to know how the proposed development will impact the aquifer. A report prepared by a professional hydrogeologist is necessary to determine what the impact to the aquifer will be.

Mr. Bernardo stated that the Board will not be imposing any additional burden if the Board denies the variance request. The requirement to submit a hydrogeologic study already exists.

Mr. Janos stated that he is not satisfied that the evidence presented to the Board has adequately addressed what may occur on the site as a result of the proposed development and its possible impact on the aquifer. More specific details regarding the possible impact on the aquifer, which a hydrogeologic study will provide, are necessary.

**Ms. Reid moved that the Zoning Board of Adjustment grant a variance from Section 503.6.C of the Town of North Hampton Zoning Ordinance to not require submittal of a hydrogeologic study associated with development for a site within the Aquifer Protection District located at 216 Lafayette Road. Second by Mr. Buchanan. The motion failed by a 1-4 vote with Mr. Buchanan in favor and Mr. Janos, Mr. Pinette, Mr. Bernardo, and Ms. Reid opposed.**

The Board, by consensus without objection, drafted the following language giving the reasons for the Board's decision:

**Summary For The Majority's Decision:**

**Denial of the variance request was based on the determination of the Zoning Board of Adjustment that all five of the standards for authorizing a variance listed in NH RSA 674:33 were not satisfactorily met.**

**1. The variance, if granted, would be contrary to the public interest. The Aquifer Protection District Ordinance regulations were enacted by the townspeople as a means to protect the Town's water supply. Non-submittal of a hydrogeologic study would be contrary to the public's health, safety, and welfare in that the proposed development's potential to pollute the area's groundwater may not be adequately evaluated.**

**2. The variance, if granted, would not observe the spirit of the ordinance. The Town of North Hampton Zoning Ordinance provides means to accomplish the Master Plan vision to protect water and other natural resources. Non-submittal of a hydrogeologic study is contrary to this vision.**

**3. If the variance was granted, a substantial justice would not be done in that the potential of introduction of polluting substances to the aquifer may not be adequately evaluated. Even without the requested variance, the applicant can proceed with development of the site. The gain to the public outweighs the loss to the applicant.**

**4. The variance, if granted, may or may not result in diminished values for the surrounding properties. Based on the information presented at the meeting, no determination regarding this criterion can be made at this time.**

**5. No unnecessary hardship resulting from the literal enforcement of the provisions of the ordinance exists. The applicant's statement relating to the financial burden of the cost of a hydrogeologic study does not constitute a hardship as defined by NH RSA 674:33. No other evidence relating to this criterion was presented to the Board. Denial of the variance would not prohibit reasonable use of the property.**

**III. Other Business.**

Mr. Milner stated that the Board has a seat on the Town of North Hampton Ethics Committee. The ZBA Chair has filled that seat in the past. Mr. Milner suggested that the Board confirm its representative on the Ethics Committee with an on-the-record vote.

**Mr. Pinette moved that the Zoning Board of Adjustment appoint Chair Mark Janos as its representative on the Town of North Hampton Ethics Committee. Second by Ms. Reid. The vote was 4-0-1 in favor of the motion with Mr. Janos abstaining.**

Mr. Milner informed the Board that two residents of North Hampton have requested to be appointed as alternate members of the ZBA.

**Mr. Bernardo moved that Audrey Prior be appointed to a one year term and Vin Carbone be appointed to a three year term as alternate members of the Zoning Board of Adjustment. Second by Mr. Pinette. The vote was unanimous in favor of the motion (5-0).**

238 Mr. Milner informed the Board about recent changes to State of NH law regarding the ability of a town  
239 to establish expiration dates for variances and special exceptions and extending the required time frame  
240 to hear a ZBA case after submittal of an application to 45 days.

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242 **Ms. Reid moved to adjourn the meeting at 8:13pm. Second by Mr. Buchanan. The vote was**  
243 **unanimous in favor of the motion (5-0).**

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245 Respectfully submitted,

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249 Rick Milner

250 Recording Secretary