



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, June 28, 2016 at 6:30pm
Town Hall, 231 Atlantic Avenue
North Hampton, NH 03862**

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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 Case
10 Record and available for inspection at the Town Offices.

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12 **In attendance:** Charles Gordon, Chair; Phelps Fullerton, Vice Chair; Members Mark Janos, George
13 Lagassa, and Jonathan Pinette; and Recording Secretary Rick Milner.

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15 **I. Preliminary Matters.**

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

17 Mr. Gordon presented the minutes of the March 22, 2016 meeting.

18 **Mr. Janos moved that the ZBA accept the minutes of the March 22, 2016 meeting as written. Second**
19 **by Mr. Pinette. The vote was unanimous in favor of the motion (5-0).**

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21 **II. New Business.**

22 **1. Case #16:01 – Applicant, James A.C. Jones, 207 Atlantic Avenue, North Hampton, NH 03862.**

23 The Applicant requests an administrative appeal of Notice of Violation and Cease and Desist
24 Order for property at 206 Lafayette Road indicating violation of Town of North Hampton Zoning
25 Ordinance Section 405.3 Prohibited Uses for All Districts and Section 405.1.1 Planning Board
26 review of Permitted Uses – Industrial-Business/Residential District. Property Owner: James A.C.
27 Jones; Property Location: 206 Lafayette Road, North Hampton, NH; M/L: 021-027-000; Zoning
28 District: I-B/R, Industrial-Business/Residential District.

29
30 In attendance for this application:

31 James A.C. Jones, applicant; Bobbie Hantz, attorney for the applicant; Brian Bouchard, attorney for the
32 applicant; Matthew Serge, attorney for the Town of North Hampton; and Kevin Kelley, Code
33 Enforcement Officer for the Town of North Hampton.

34
35 Mr. Gordon announced that the Zoning Board of Adjustment (ZBA) had received a letter from Mr. Serge
36 which raises the question of whether or not the ZBA has jurisdiction to hear the case. Mr. Gordon also
37 presented to the Board a copy of a summons and docket number for complaint filed with the Superior
38 Court regarding this matter. Mr. Gordon suggested that the Board address the jurisdictional issue prior
39 to deliberating the merits of the case. The Board came to a consensus without objection to address the
40 jurisdictional issue prior to deliberating the merits of the case.

41
42 Mr. Serge addressed the Board. Mr. Serge stated that this case is not a standard administrative decision
43 found within NH RSA 676:5. This matter is derived from a cease and desist order issued pursuant to
44 NH RSA 676:17-a which has particular stated procedural aspects. Mr. Serge noted that NH RSA 676:17-
45 a.VII states that proceedings in the action shall be governed by the rules of the court. This is an
46 exception to the normal rule that makes an interpretation of the Zoning Ordinance by a Town official

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RSA 91A:2,II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.

47 appealable to the ZBA. Therefore, the matter is not subject to an administrative appeal hearing before
48 the ZBA and should remain within the jurisdiction of the court.

49

50 Ms. Hantz addressed the Board. Ms. Hantz stated that the entire statutes should be taken into
51 consideration when considering this matter. NH RSA 676:5 and 674:33 specifically give the ZBA the
52 power to hear appeals from enforcement actions. NH RSA 676:17-a does not remove the right of the
53 ZBA to a first crack at hearing an appeal for this matter. The applicant is appealing the code enforcement
54 officer's interpretation of the ordinance, not the filing of the enforcement action. The omission of rights
55 to appeal the matter to the ZBA within NH RSA 676:17-a does not remove the rights to a ZBA appeal
56 process given in NH RSA 676:5 and 674:33. An appeal process with the ZBA is the appropriate appeal
57 route for decisions by an administrative official.

58

59 Mr. Gordon suggested that the Board begin deliberation of the jurisdictional issue.

60

61 Mr. Janos stated that the mechanism chosen by the Town to issue the cease and desist order would
62 require that the matter be heard by another authority prior to the ZBA hearing the matter. The
63 circumstances of the code enforcement action preclude the ZBA from making a decision on jurisdiction
64 at this time. Mr. Janos suggested that the Board not dismiss the case, but rather table the matter until
65 the court makes its decision.

66

67 Mr. Pinette agreed with the comments of Mr. Janos. The Board should not hear the case and possibly
68 create a conflict with a Superior Court decision.

69

70 Mr. Fullerton stated that, since the matter was already before the Superior Court, it would not be
71 prudent for the Board to take jurisdiction of the case at this point.

72

73 Mr. Gordon stated that it was inappropriate for the Board to consider the matter since a case is pending
74 in Superior Court. He is inclined to table the matter.

75

76 **Mr. Pinette moved that the Zoning Board of Adjustment table the matter of hearing Case #16:01 –**
77 **James A.C. Jones administrative appeal of Notice of Violation and Cease and Desist Order for property**
78 **at 206 Lafayette Road indefinitely until the court hears the case and makes a decision. Second by Mr.**
79 **Janos. The vote was unanimous in favor of the motion (5-0).**

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81 **2. Case #16:02 – Applicant, Terrence Belluche, P.O. Box 168, North Hampton, NH 03862.** The
82 applicant requests a special exception, pursuant to Section 513 of the Town Of North Hampton
83 Zoning Ordinance, for an accessory apartment in a detached barn/garage at 66 South Road.
84 Property Owner: Terrence and Glenda Belluche; Property Location: 66 South Road, North
85 Hampton, NH; M/L: 008-145-000; Zoning District: R-1, High Density District.

86

87 Mr. Gordon presented to the Board a letter from the applicant withdrawing his accessory apartment
88 special exception application.

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90 **Mr. Pinette moved to adjourn the meeting at 7:30 pm. Second by Mr. Fullerton. The vote was**
91 **unanimous in favor of the motion (5-0).**

92 Respectfully submitted,

93 Rick Milner

94 Recording Secretary