



**Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, August 23, 2016 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: Charles Gordon, Chair; Phelps Fullerton, Vice Chair; Members Mark Janos, George Lagassa, and Jonathan Pinette; Alternate member Dennis Williams; and Recording Secretary Rick Milner.

I. Preliminary Matters.

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

Mr. Gordon presented the minutes of the July 26, 2016 meeting.

Mr. Pinette moved that the ZBA accept the minutes of the July 26, 2016 meeting as written. Second by Mr. Janos. The vote was unanimous in favor of the motion (5-0).

Mr. Gordon presented the minutes of the August 2, 2016 meeting.

Mr. Pinette moved that the ZBA accept the minutes of the August 2, 2016 meeting as written. Second by Mr. Janos. The vote was unanimous in favor of the motion (5-0).

II. Unfinished Business.

- 1. Case #16:03 – Applicant, Annette Lee, 2 Elm Road, North Hampton, NH 03862.** The applicant requests a postponement of hearing to consider variance from Section 405 of the Town of North Hampton Zoning Ordinance to allow a 79 space parking area within the R-1, Residential High Density District for overflow event parking associated with activities and functions at the Throwback Brewery business located within the I-B/R, Industrial-Business/Residential District. Property Owners: Annette Lee and Nicole Carrier, 2 Elm Road, North Hampton, NH 03862; Property Location: 2 Elm Road, North Hampton, NH 03862; M/L: 013-009-000; Zoning District: I-B/R, Industrial–Business/Residential District, and R-1, Residential High Density District.

No one in attendance for this application.

Mr. Gordon presented the applicant's request to postpone the hearing to consider a variance until the September 27, 2016 meeting date. The applicant is working on plan revisions to either eliminate the need for a variance or reduce the size of the area for proposed improvements which require a variance.

Mr. Janos moved that the ZBA grant the request to postpone consideration of the variance request to allow a parking area within the R-1 zoning district at the Throwback Brewery property and continue the public hearing to the September 27, 2016 meeting. Second by Mr. Pinette. The vote was unanimous in favor of the motion (5-0).

47 **III. New Business.**48 **1. Case #16:01 - Applicant, James A.C. Jones, 207 Atlantic Avenue, North Hampton, NH 03862.**

49 The applicant requests a rehearing of the Zoning Board of Adjustment's decision to table an
50 administrative appeal of Notice of Violation and Cease and Desist Order for property at 206
51 Lafayette Road indicating violation of Town of North Hampton Zoning Ordinance Section 405.3
52 Prohibited Uses for All Districts and Section 405.1.1 Planning Board review of Permitted Uses –
53 Industrial-Business/Residential District. Property Owner: James A.C. Jones; Property Location:
54 206 Lafayette Road, North Hampton, NH; M/L: 021-027-000; Zoning District: I-B/R, Industrial-
55 Business/Residential District.

56
57 In attendance:

58 James A.C. Jones, applicant; Bobbie Hantz, attorney for the applicant; and Kevin Kelley, Code
59 Enforcement Officer for the Town of North Hampton.

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61 Mr. Gordon explained that the agenda item regarding Case #16:01 was not a public hearing to consider
62 the merits of the applicant's case. The Board was conducting a meeting open to the public to consider
63 only the applicant's request that the Zoning Board of Adjustment (ZBA) reconsider its June 28, 2016
64 decision to table an administrative appeal of Notice of Violation and Cease and Desist Order for property
65 at 206 Lafayette Road.

66
67 Mr. Gordon presented letters from the applicant's attorney requesting that the Board reconsider its
68 June 28, 2016 decision and Town of North Hampton's attorney opposing the applicant's request. Mr.
69 Gordon also presented motions filed in New Hampshire Superior Court by:

- 70 a. the applicant requesting that the Superior Court remand the current matter before Superior
71 Court regarding 206 Lafayette Road property to the District Court or stay the Superior Court
72 proceedings to allow the Zoning Board of Adjustment to hear the administrative appeal case and
- 73 b. the Town of North Hampton opposing the applicant's request to remand the case and keep the
74 case within the Superior Court's jurisdiction.

75 Mr. Gordon also reminded the Board members of letters previously submitted to the ZBA regarding the
76 jurisdictional issue by attorneys for both sides.

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78 Mr. Gordon stated that, since the matter of jurisdiction was currently before the Superior Court as the
79 result of the applicant's motion filed on August 3, 2016, in his view it was proper that the ZBA defer to
80 the Superior Court and not entertain consideration of the applicant's administrative appeal at this time.

81
82 Mr. Janos stated that, after review of attorneys' correspondence and the State of NH statutes, he
83 believes that the ZBA has jurisdiction to hear the administrative appeal. However, the recent motions in
84 Superior Court initiated by the applicant may change his opinion when reviewed.

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86 Mr. Pinette stated that the applicant's attorney comment in the reconsideration request letter that the
87 ZBA did not seek independent legal counsel to provide advice regarding the jurisdictional issue prior to
88 making its June 28 decision to avoid incurring legal fees was not accurate. Mr. Pinette wanted it known
89 for the record that reservations regarding legal fees were his opinion only and not a view or decision of
90 the entire Board.

91
92 Mr. Lagassa stated that language in two different NH RSA statutes referring to the appeals process, RSA
93 676:5 and RSA 676:17-a, may be in conflict with each other. RSA 676:5 deals with the subject in general

terms and RSA 676:17-a deals with the subject in more specific terms. Mr. Lagassa read the following statement in the Town's attorney letter:
..."when interpreting two statutes which deal with similar subject matter, (the court) will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. EnergyNorth Natural Gas, Inc. v. City of Concord, 164 N.H. 14, 16 (2012).... well-recognized rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the latter will be regarded as an exception to the general enactment where the two conflict. Appeal of Johnson, 161 N.H. 419, 424 (2011)."

Mr. Lagassa stated that he believes that the ZBA made the correct decision on June 28, 2016 when it tabled the matter until the court hears the case and makes a decision. Since some authority, whether it is the court or the ZBA, will hear the case, there is no injustice to the applicant if the ZBA defers to the court's jurisdiction. He believes that the ZBA should not grant the applicant's request to rehear the case.

Mr. Pinette stated that he agrees with Mr. Lagassa's comments.

Mr. Fullerton stated that, due to the complex legal issues presented by this case, the Board should defer to the Superior Court. He believes that the Board should deny the applicant's request and not grant a rehearing of the case at this time.

Mr. Janos stated that, after reviewing the applicant's August 3 motion requesting that the Superior Court remand the case and the Town's motion responding to the applicant's motion, the motions bring some doubt as to the ZBA's authority to hear the case. He believes that the ZBA should defer to the court.

Mr. Pinette stated that the Board's decision to table the matter has been well thought out. In fact, the ZBA held a special meeting and voted unanimously to seek legal counsel after receiving the applicant's reconsideration request.

Mr. Lagassa moved that the Zoning Board of Adjustment deny the applicant's request of a rehearing of the Zoning Board of Adjustment's decision to table an administrative appeal of Notice of Violation and Cease and Desist Order for property at 206 Lafayette Road indicating violation of Town of North Hampton Zoning Ordinance Section 405.3 Prohibited Uses for All Districts and Section 405.1.1 Planning Board review of Permitted Uses – Industrial-Business/Residential District. Second by Mr. Pinette. The vote was unanimous in favor of the motion (5-0).

Mr. Janos moved to adjourn the meeting at 7:13 pm. Second by Mr. Lagassa. The vote was unanimous in favor of the motion (5-0).

Respectfully submitted,

Rick Milner
Recording Secretary