



Meeting Minutes
Town of North Hampton
Zoning Board of Adjustment
Tuesday, July 25, 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; Members Jonathan Pinette, Joseph Bernardo, and David Buchanan; and Recording Secretary Rick Milner.

I. Preliminary Matters.

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

Mr. Lagassa presented the minutes of the June 27, 2017 meeting.

Mr. Pinette moved that the ZBA accept the minutes of the June 27, 2017 meeting as written. Second by Mr. Buchanan. The vote was 3-0-2 in favor of the motion with Mr. Lagassa and Mr. Bernardo abstaining.

All potential witnesses for Case #17:02 and Case #17:03 were sworn in.

II. New Business.

A. Case #17:02 – Applicant: 260 Atlantic Avenue, LLC - Michael Kierstead, 200 Cass Street, Portsmouth, NH 03801. The Applicant requests a variance from Section 406.1 – Minimum Lot Area (2 acres) of the Town of North Hampton Zoning Ordinance to allow subdivision of an existing 2.34 acres lot into two 1.17 acre lots. Property Owner: 260 Atlantic Avenue, LLC, 200 Cass Street, Portsmouth, NH 03801; Property Location: 260 Atlantic Avenue; M/L: 014-033-000; Zoning District: R-1 High Density District.

In attendance for this application:

Michael Kierstead, applicant; Craig Salomon, attorney for applicant; Paul Dobberstein, engineering consultant for applicant.

Mr. Salomon addressed the Board. Mr. Salomon stated that the variance request was for lot area only. The other dimensional aspects of the zoning ordinance were met by the proposal. The proposed subdivision plan indicates proper setbacks, wetlands area, 4,000 square foot area for septic system placement, and 3,350 square foot allowable buildable area for a structure. If a variance is granted, the proposed subdivision plan would require Planning Board approval.

Mr. Salomon addressed the five criteria for authorizing a variance identified in the State of NH RSA's.
1. The applicant seeks relief from the lot area square footage requirement of the ordinance. The purpose of this ordinance, in conjunction with setbacks, is to promote open space. Setback and frontage requirements are met or exceeded by the proposed plan. Since open space is the public interest

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protected by the ordinance, it is noted that this requirement is served by an adjacent 18.55 acre parcel of conservation land. Therefore, the public interest is not impacted by the grant of this variance.

2. Zoning ordinances should reflect current character of the neighborhood. Current lots in neighborhood are smaller in size and have less frontage than those created by the proposed subdivision plan. If variance is granted, the proposed lots would be consistent with the character of the existing neighborhood.

3. Consideration of substantial justice is a balancing test between the rights of the property owner, abutters, and the public. Given the character of the neighborhood, the total conformity of the proposed lot to all requirements with the exception of area, and lack of diminution in value of surrounding properties granting the variance would do substantial justice. The property rights of the owner outweigh the abutters' rights and public interests.

4. Granting the variance would allow construction of a new home consistent with other properties in the neighborhood. This is an established residential neighborhood. There is a new home being constructed in the immediate neighborhood. The building envelope is consistent with the requirements of the ordinance. The proposed lot size is consistent with the majority of the lots in the neighborhood. There would be no diminution of value.

5. The proposed use is reasonable given that it is an allowed residential use in the zoning district. The general public purpose of the ordinance provision is to preserve open space. Due to special conditions of the property such as:

- a. the proposed lots will be bigger than many of the current lots in the neighborhood,
 - b. the proposed lots will have more than the required frontage, and
 - c. a large area of abutting conservation land at the rear of the property,
- there is no fair and substantial relationship between the open space goal of the ordinance and its application to this specific property.

Mr. Lagassa opened the public hearing at 7:05pm. Mr. Lagassa asked for statements in support of the application. No comments from the public in attendance were made. Mr. Milner read a letter submitted by abutter Dieter Ebert in support of the variance application.

Mr. Lagassa asked for comments in opposition to the application.

Resident Phelps Fullerton addressed the Board. Mr. Fullerton stated that the property being discussed has 4,200 square feet of wetlands and 33,300 square feet of wetland buffer area on it. The property also abuts approximately 17 acres of conservation land. Mr. Fullerton stated that 18.5% of the total land area in the Town of North Hampton is deeded to the Town as conservation land or has conservation easements to prevent development and promote public recreation uses. Intense development of land adjacent to wetlands and conservation lands is contrary to the public interest to protect these areas from the negative effects of development.

Mr. Fullerton stated that the spirit of the ordinance is described by the following excerpts from the Town of North Hampton Master Plan:

- a. "The primary objective of the Future Land Use Plan is to provide for orderly growth... A second objective is the realistic application of concerns expressed by the citizens as to the retention of rural

characteristics and community atmosphere existing in North Hampton... no modifications to the present zoning districts are recommended."

b. "Over the years the Town has relied entirely on private on-site sewer systems in its approach to land use regulation. The two acre minimum lot size requirement best exemplifies this. In the 5 to 10 year planning period of this Master Plan, the construction of a municipal sewerage treatment facility is neither foreseen nor desired, while development pressure in many sections of Town is expected to continue."

Mr. Fullerton stated that the proposed subdivision plan is clearly contrary to the spirit of the ordinance described by the Town Master Plan's encouragement to maintain the two acre lot minimum requirement.

Mr. Fullerton stated that any hardship is self-imposed. The lot is too small to subdivide, contains too much wetlands and wetland buffer area, and has no unique special conditions that distinguish it from other properties in the area. There are 11 other properties which abut conservation land in the area. Seven of these properties are larger in size than the applicant's property.

Mr. Fullerton stated that allowing nitrate and phosphate nutrient loading from septic systems adjacent to wetlands would exhibit extremely poor stewardship over the wetlands' fragile and important ecosystem that contributes groundwater recharge of the Town's drinking aquifers.

Mr. Fullerton further stated that one new house and driveway may not seem like a significant impact. However, if you multiply the impact by all the properties which may similarly subdivide, then increased traffic in the neighborhoods will create a hazardous safety issue.

Resident Lisa Wilson addressed the Board. Ms. Wilson stated that, because the lot in question is not unique in North Hampton, the nature of the lot does not meet the hardship criteria. There are many lots in town that are four acres or less that abut conservation land. Many other lots in town abut conservation land and the granting of a variance of such a magnitude runs counter to the Town's Master Plan and the recommendations of the NH Coastal Risks and Hazards Commission report, which outlines ways to prepare NH Coastal Communities for protection from storm surge, sea-level rise, and extreme precipitation.

Ms. Wilson stated that the granting of this variance is not in the best interest of the public because increasing residential density will have a negative impact on abutting and protected conservation land and wetlands. It has been proven that higher density residential development causes taxes to increase and is not within the spirit of the ordinance. The granting of the variance does not promote open space, unless one acre of conservation land was conserved on a two-acre lot. The applicant's proposal plans to do the opposite of preserving open space by developing one more acre, not conserving it.

Abutter Robin Reid addressed the Board. Ms. Reid stated that she was opposed to the variance request. The two acre minimum lot size requirement was enacted for several reasons:

1. Continue to promote the Town's rural character. Residents have worked to restrict lighting, tree removal, and preserve stone walls as other means to preserve rural character of the neighborhood.
2. Protect integrity of septic systems with leaching fields and well water supplies. Allowing homes to be built on lots of less than two acres will have a negative impact on septic systems and wells going forward.

141 3. Increased density will put a strain on the school system and other Town services, such as police and
142 fire.

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144 Ms. Reid stated that many of the properties along Atlantic Avenue which are less than two acres in size
145 existed prior to the enactment of the two acre lot minimum requirement. No parcels below the two acre
146 lot minimum have been allowed since the 44 year old ordinance went into effect. If the variance was
147 granted, this could lead to similar variances that would change the rural character of the town and make
148 the town similar in character to Portsmouth or other cities.

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150 Ms. Reid stated that there were no special conditions that make the applicant's property unique. The
151 applicant is getting reasonable use of his property. No unnecessary hardship would result from literal
152 enforcement of the provision of the ordinance.

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154 Paul Cooper addressed the Board on behalf of abutter Jo Ellen Hess in opposition to the variance
155 request. Mr. Cooper stated that the variance request was for a significant amount of area,
156 approximately one acre, not for a small amount of area. He did not see any hardship expressed by the
157 applicant.

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159 Mr. Milner read a letter submitted by abutter Jo Ellen Hess in opposition to the variance application.

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161 Resident Phil Wilson addressed the Board. Mr. Wilson stated that one reason for adoption of the
162 ordinance provision under consideration was to address the concerns of residents in 1973 that many
163 small lots were being developed. The purpose of the ordinance, in part, was to prevent the proliferation
164 of small lots, as proposed by the applicant, in this neighborhood and throughout the town. Therefore,
165 the argument made by the applicant regarding adherence to the spirit of the ordinance is questionable.

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167 Mr. Wilson further stated that there are many lots in this neighborhood and other areas in town which
168 are similar to the applicant's lot. There are no special conditions on this lot that distinguish it from other
169 lots. Many lots in the neighborhood which do not conform to the two acre lot minimum requirement
170 were established prior to implementation of the ordinance. The applicant's argument regarding
171 hardship is not adequate. Mr. Wilson opposes the variance request.

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173 Mr. Salomon responded that he disagreed with the interpretation of the unnecessary hardship criteria
174 presented by those in opposition to the variance request. New Hampshire courts have stated that
175 zoning ordinances should reflect the current character of the neighborhood. The proposed subdivision
176 would be in character with the current conditions of the immediate neighborhood. The larger size of the
177 applicant's lot compared to other lots in the neighborhood and the lot's larger amount of frontage make
178 it unique.

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180 Mr. Lagassa closed the public hearing at 7:46pm. Mr. Lagassa suggested that the Board consider each of
181 the five variance criteria.

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183 Mr. Buchanan stated that he believed that the variance, if granted, would be contrary to the public
184 interest due to the fact that the proposed lots would be too small.

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186 Mr. Bernardo stated the fact that the applicant's lot abuts conservation land does not constitute a
187 special right and is not sufficient reason to grant a variance.

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Mr. Lagassa presented information from a town community survey used to help create the Town's Master Plan which detailed that 70 percent of the respondents indicated that the town should maintain its rural character. In his opinion, there is a strong public interest defined in the survey which is different than what is proposed by the variance request.

Mr. Janos stated that many of the lots which do not conform to the two acre minimum lot requirement were created prior to the adoption of the ordinance provision. Creation of new lots which conform to lots that were in existence prior to the zoning ordinance provisions is not consistent with the spirit of the ordinance.

Mr. Lagassa stated that the balancing test suggested by the applicant favors the rights of the public at large to maintain the two acre lot minimum requirement. There are potentially hundreds of lots within the town which could be subdivided in a similar manner as proposed by the applicant. If these subdivisions were allowed to occur, a substantial injustice to the public interest would result.

Mr. Pinette suggested that crowding homes together would diminish property values. As an investment, homes on larger lots have greater value. Mr. Pinette agrees with Mr. Wilson's comment that one reason for the establishment of the two acre minimum lot size requirement was to prevent the proliferation of smaller lots as occurred prior to the adoption of the ordinance provision. Values of homes in these older, more densely packed neighborhoods are lower.

Mr. Pinette stated that there is not an unnecessary hardship created by the denial of the variance request. Denial of the variance request would only impact the applicant's ability to create a new lot to build and sell a new home. This impact is not a true hardship.

Mr. Janos stated that he sees no unnecessary hardship which would prevent the reasonable use of the property that would result from the denial of the variance request.

Mr. Lagassa stated that he believes that none of the criteria for authorizing a variance have been met by the application.

Mr. Janos moved that the Zoning Board of Adjustment grant the request for variance from Section 406.1 – Yard and Lot Requirements – Minimum Lot Area (2 acres) of the Town of North Hampton Zoning Ordinance to allow subdivision of a 2.3417 acre lot into 2 lots, each comprised of 1.1710 acres. Second by Mr. Pinette.

Discussion of the motion – Mr. Lagassa suggested that the motion should state that the application was being denied since it appears from the Board's comments that none of the five variance criteria have been met.

Mr. Janos and Mr. Pinette withdrew the motion to grant the variance request.

Mr. Buchanan moved that the Zoning Board of Adjustment deny the request for variance from Section 406.1 – Yard and Lot Requirements – Minimum Lot Area (2 acres) of the Town of North Hampton Zoning Ordinance to allow subdivision of a 2.3417 acre lot into 2 lots, each comprised of 1.1710 acres. Second by Mr. Pinette. The vote was unanimous in favor of the motion (5-0).

Mr. Lagassa suggested that the Board draft language giving the reasons for the Board's decision. The Board, by consensus without objection, drafted the following language:

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 variance request as proposed does not satisfy the conditions adopted by the townspeople as detailed in the Town of North Hampton Master Plan with regards to preserving the rural character of the town, protecting wetlands, and advocacy of open space.

2. The variance, if granted, would not observe the spirit of the ordinance. The two acre minimum lot area requirement established since 1973 has not been changed and has been consistently upheld by the opinion of the townspeople as stated in the Master Plan throughout many years. Increased density and disproportionate growth will have a negative impact on sewage disposal, town services, and maintaining the town's rural character.

3. If the variance was granted, a substantial injustice would result from multiple subsequent applications for subdivision creating lots below the two acre minimum lot area requirement.

4. The variance, if granted, would result in diminished values for the surrounding properties. One reason for the establishment of the two acre minimum lot area requirement was to prevent overcrowding of neighborhoods. Values of homes in more densely packed neighborhoods are lower than in less densely packed neighborhoods. The rural character of the neighborhood would be changed.

5. No unnecessary hardship resulting from the literal enforcement of the provisions of the ordinance exists. There are no special conditions of the property that distinguish it from other properties in the area. Denial of the variance would not prohibit reasonable use of the property.

B. Case #17:03 – Applicant: Elm Road Industrial Park, LLC – David Keefer, 27 Birch Road, North Hampton, NH 03801. 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: Elm Road Industrial Park, LLC, 27 Birch Road, North Hampton, NH 03801; Property Location: 12 Elm Road; M/L: 013-020-000; Zoning District: I-B/R, Industrial – Business/Residential District.

In attendance for this application:

David Keefer, applicant; Craig Salomon, attorney for applicant.

Mr. Salomon addressed the Board. Mr. Salomon stated that Mr. Keefer is a manager of Elm Road Industrial Park, LLC ('company'). The company recently purchased the property at 12 Elm Road including the commercial buildings and house labelled as Unit E on the plans submitted to the Board. Mr. Salomon explained that, even though the Unit E structure is designated as office space on the approved 1988 site plan for the property, the structure has always been used as a residence since its construction in 1920. While performing research in preparation for the company's impending purchase of the property, Mr. Keefer discovered that the residential use of the house since 1988 violated Section 406.8 of the zoning

ordinance. Mr. Salomon stated that the applicant requests a variance to allow the use of the Unit E structure as a residence.

Mr. Salomon explained that the parking situation on the site would improve if the variance was granted since the residential use only requires 2 spaces compared to the 7 spaces required for a commercial office use. The structure has its own septic system and utilities. Mr. Salomon also explained that the site may need to be reviewed by the Planning Board to ensure that the residential use meets parking regulations, septic system standards, and other code requirements.

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

1. The variance, if granted, would not be contrary to the public interest due to the fact that the surrounding neighborhood has existing mixed residential and commercial uses.

2. The spirit of the ordinance would be observed if the variance was granted due to the fact that residential uses are allowed in the Industrial-Business/Residential zoning district.

3. Substantial justice would be done by the granting of the variance since the structure has always been used and taxed as a residence. There have been no complaints from neighbors arising from the structure's use as a residence.

4. If the variance was granted, nothing would change on the lot. The uses on the lot would continue as they have for many years. Property values would not be affected.

5. The surrounding properties along Elm Road and Birch Road are residential in nature. This property with its mixed use is unique in the neighborhood. Unit E has always had the appearance of a residence. Denial of the variance would create an unnecessary hardship due to the historical appearance and use of the structure.

Mr. Keefer addressed the Board. Mr. Keefer stated that the structure would be more financially viable if used as a residence, rather than as office space.

Mr. Lagassa opened the public hearing at 8:40pm.

Abutter Robert Merrill addressed the Board. Mr. Merrill stated that he supports the variance request. He has no problem with the structure being used as a house. It has always been used as a house.

Mr. Lagassa closed the public hearing at 8:42pm. Mr. Lagassa suggested that the Board consider each of the five variance criteria.

Mr. Janos stated that the variance, if granted, would not be contrary to the public interest since the structure has been used as a residence for many years since its construction. Mr. Janos asked if the change to a residential use would require any review by municipal authorities besides the Building Department.

Mr. Milner stated that, in his opinion, some sort of Planning Board site review may be necessary.

Mr. Salomon stated that he would recommend that the applicant seek input from the Planning Board.

Mr. Bernardo stated that the public interest may be best served with a review of how a residential use impacts the site with regards to traffic flow and safety concerns.

Mr. Lagassa stated that the spirit of the ordinance would be observed if the variance is granted since the actual title of the zoning district, Industrial-Business/Residential, seems to envision mixed use even though there is a specific prohibition in Section 406.8.

Mr. Janos stated that, if the variance was granted, substantial justice would occur since a use that has existed for many years would be allowed to continue. Mr. Buchanan agreed with Mr. Janos' comment.

Mr. Bernardo stated that just because a use has existed for many years does not necessarily validate allowing it to occur going forward.

Mr. Janos stated that this lot has unique conditions which may allow for approval of a variance.

Mr. Lagassa stated that, due to the comments from an abutter who approved of the variance request, there appears to be no reason to believe that property values will be diminished as the result of a variance being granted.

Mr. Pinette stated that the variance, if granted, may actually increase property values by not adding a commercial building to the surrounding residential neighborhood. The structure has a residential appearance that conforms to the surrounding neighborhood.

Mr. Bernardo stated that the applicant's lot is a unique property which does not have many characteristics that are comparable to other properties.

Mr. Lagassa stated that denial of the variance request would prevent the natural use of a long-standing residential structure. There are not similar instances where this situation will occur.

Mr. Bernardo moved that the Zoning Board of Adjustment grant a variance from Section 406.8 of the Town of North Hampton Zoning Ordinance to allow a residential use prohibited by the zoning ordinance for property located at 12 Elm Road as represented in the application presented to the Board subject to the condition that all federal, state, and local permits and approvals are obtained by the applicant. Second by Mr. Janos. The vote was unanimous in favor of the motion (5-0).

Mr. Janos moved to adjourn the meeting at 9:10pm. Second by Mr. Bernardo. The vote was unanimous in favor of the motion (5-0).

Respectfully submitted,

Rick Milner
Recording Secretary