

PUBLIC HEARING AND BUSINESS MEETING

Call to Order - 7:00 PM: R. McDermott called the meeting to order at 7:05 p.m.

Roll Call: R. McDermott, Chairman; C. Leto, Vice Chairman;
P. Young, Members; P. Robart, Alternate Member;
K. Kelley, Building Inspector/Code Enforcement Officer;
L. A. Ruest, Administrative Assistant
Not Present: A. Dittami, S. Volpone, Jr., J. Henebry,

P. Robart was designated a voting member for this meeting. Four members were present representing a quorum.

C. Organizational Meeting

1. Nomination of Chairman:

MOTION: To nominate and elect R. McDermott as Chairman for 2007-2008.

MOTION: C. Leto
SECOND: P. Young
UNANIMOUS

No other action was taken on this matter.

2. Nomination of Vice Chairman:

MOTION: To nominate and elect C. Leto as Vice Chairman 2007-2008.

MOTION: R. McDermott
SECOND: P. Robart
UNANIMOUS

No other action was taken on this matter.

P. Young agreed to be considered for full Member for another term. P. Robart agreed to be considered for Alternate Member for another term.

Appointments for S. Volpone and J. Henebry will be considered at a future time.

D. Public Hearings:

1. **Case #07-03:** Application from **Deborah L. Norton-Torromeo** requesting a Variance to the terms of Article III, Section 8.4.1, and asks that said terms be waived to permit an addition to an existing home be constructed in Zone A as it is less than 100' feet from the Wetlands boundary on property located at 8 Dodge Road (Map 7, Lot 37)

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K. Kelley informed the Board that this application was accepted without proper plans and is therefore considered incomplete. This matter is continued to the April 26 meeting to allow for submission of proper plans. K. Kelley has notified abutters by telephone.

2. Case # 07-04: Application from **Stephen and Leigh Wilber** requesting a Variance to the terms of Article III, Section 8.4.1, and asks that said terms be waived to permit an addition to an existing home be constructed in Zone A as it is less than 100' feet from the Wetlands boundary on property located at 27 Old Stage Road (Map 5, Lot 51-10)

Leigh Wilber and brother-in-law Michael Wilber were present. A proper letter of authorization for Michael Wilber to represent the applicants is part of the file.

L. Wilber stated that this home currently has a three-season porch in need of repair. The applicants are looking to create a year-round living space as an extension of the kitchen and addition above. She referred the Board to a copy of an engineered plan prepared in the past for a lot-line adjustment application before the Planning Board. The plan shows the wetland demarcation, the wetland buffer as well as side line setbacks and location of existing buildings on the parcel. All structures are located within the wetland buffer which is in violation of the Wetland Conservation District ordinance bringing the applicants to the ZBA to seek relief.

The applicants' plan consists of two phases. Phase 1 is the area shown on the plan with hatched marks. This phase is seeking an additional two feet of encroachment into the wetland buffer over that that exists today. The plan is to replace the tube type supports of the three-season porch with a poured concrete foundation. It was noted for the record that the Wilbers purchased the house in 2004. Question was raised as to whether the three-season porch was built before the wetland ordinance went into effect in 1988. Following review of the property tax card, it was found that the three-season porch was added in 1988.

In response to the Board, K. Kelley stated that he has not visited the site. He added that if the Wilbers replaced the three-season porch with a structure on the existing tube supports, that they would not have had to come to the ZBA for relief; he would have been able to grant them a building permit to replace in kind. The request is for a frost wall which results in disturbance to the wetland buffer. Therefore, the building permit was denied. K. Kelley added that the proposed foundation will allow support for the proposed second story portion of this renovation; the loading would not be handled on tube supports and a frost wall allows for better insulation.

P. Robart asked whether Phase II, the addition of a deck, will need to come to the ZBA. The applicant is applying once, by way of this application, to seek relief to allow the placement of a deck within the wetland buffer as well. P. Robart asked whether a patio was an option as opposed to a deck given the intrusion into the wetland buffer area.

M. Wilber stated that the actual dimension of the new area versus the existing area is 2' x 16' encroachment. Some area is being taken away. R. McDermott asked whether the applicant considered options to place the addition differently. M. Wilber stated that the well is in the way in one location and that most options are not feasible given the layout of the house. Concern was expressed with disturbing the wetland buffer further.

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Discussion was opened to abutters and members of the public. No abutters were present. Numerous members of the Conservation Commission were present and expressed concern with setting precedent by allowing further intrusion into the wetland buffer area. L. Smith noted the fact that the Planning Board will not allow creation of a lot unless it is proven that wetland areas are not utilized by buildings; certain uses are prohibited by Section 8.4.1. He cited an example of a project on Route 1 where the developer had to remove construction within the buffer area. Other suggestions and comments included:

- Another means of construction – cantilevering vs. foundation wall.
- This parcel is already being used in a productive way; to add is not consistent with the productive use of the land.
- Additional distribution and speed of run-off from the change to the roof might require mitigation.
- Concern was expressed with persons purchasing smaller homes with the intent to add on without researching local ordinances to determine whether it is permissible.
- Suggestion was made to allow the Conservation Commission to conduct a site walk and report back to the Board.

P. Young questioned whether saving the buffer zone in this regard is worth the effort in that a proper foundation might save energy. She further questioned whether the 100' wetland buffer area is no longer necessary like the 20k septic reserve area. R. McDermott stated that it is important for the Board to meet regulations/bylaws and that this ordinance has been in effect since 1988. C. Leto asked Conservation Commission members to speak to the significance of the disturbance as he is looking for some sort of scientific information that would explain the disturbance and its effects.

N. Roka stated that the soils will need to be disturbed in order to construct a foundation wall (to include trucks traveling to and from the construction site). The buffer is in place to prevent disturbance and this proposal is not allowed within the Wetlands Conservation District. M. Wilber stated he felt that an impermeable surface such as paving would have more impact to the wetlands than that of a roof. He stated he would have erosion control measures in place. He also added that a neighboring property obtained a variance for a structure within the buffer. Although the specifics of that matter were not before the Board, it was noted that each application is taken on its own merit.

At this time, M. Wilber stated that the applicants would be willing to amend their application to seek relief to construct a foundation wall to the existing footprint of the three-season porch only; thus eliminating the request for an additional two feet and ultimate Phase 2 of a deck.

Discussion took place with regard to the long-term affect to the buffer. K. Kelley stated that once the foundation is in place, the applicants will need to restore the area and that cantilevering is allowed, by code, up to four feet with the existing structure but not with the second floor proposed. P. Robart inquired as to other building options including steel beams, but noted that the wetland buffer will still be impacted by construction.

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Hearing no further comments or questions, R. McDermott closed the public hearing. C. Leto asked if members felt a site walk was warranted as elevations and slopes are a concern of the Conservation Commission. C. Leto added that he is not a soil engineer or a conservation expert and that intrusion of the wetlands is a concern. Although the ordinance states this request is prohibited, all are trying to understand if deviation from the ordinance in this case is reasonable. P. Robart noted that it is assumed that the three-season porch was legally constructed and that he is opposed to allowing any more encroachment for the request of Phase 2, the deck. A review of photographs of the property took place at this time to include the applicants' proposal for new construction.

R. McDermott informed the applicants that although a quorum is present, they have the opportunity to request continuance of this matter until a full board can be present. L. Wilber stated she wished to continue this meeting.

MOTION: To approve (Case # 07-04) the application from Stephen and Leigh Wilber, **as amended**, for Variance to the terms of Article III, Section 8.4.1, to permit the replacement of a tube support system to the existing three-season porch with a foundation wall for an addition to an existing home on property located at 27 Old Stage Road (Map 5, Lot 51-10) with the following conditions:

1. That the proposed Phase 2, adding a deck and stairs, is denied.
2. That in Phase 1, the additional 2' x 16' area is denied.
3. That a 4' foundation wall will be allowed that will sit within the existing footprint of the existing three-season porch.
4. That common erosion control practices (hay bales and silt fencing) will be put in place and inspected by the Building Inspector before any work commences.

MOTION: P. Robart
SECOND: C. Leto

Members spoke to the motion making the following observations:

1. No diminution in value of surrounding properties will be suffered.

The property will be upgraded and enhanced. No values are to be affected negatively. There are no abutters present with objection.

2. Granting the permit will not be contrary to the public interest.

It appears that the work proposed will not ultimately harm the wetlands the ordinance is protecting; is basically a replacement in kind.

3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship:

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(B)-Boccia Case - applicants for 'area' variance(s) may establish unnecessary hardship by proof that:

(1) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

The property is surrounded by wetland buffer and wetland. There doesn't seem that given other setbacks, there is another reasonable option other than that proposed.

(2) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

There is no other alternative location to add an addition any other way around the home.

4. Granting the permit would do substantial justice.

Approval will allow upgrade and enhancement without ultimate harm in disturbing additional wetlands//buffer.

5. The use would not be contrary to the spirit of the ordinance.

The spirit is to protect the wetlands and that's why the buffer exists. Both the Board and Applicant have agreed that the proposed project, as amended, will not harm the wetlands or the Town of Hampton Falls.

VOTE: 4 in Favor, Passes

Review of The Minutes Of The Previous Meeting

MOTION: To approve the minutes of the February 22 meeting as written.

MOTION: P. YOUNG,
SECOND: C. LETO
3 IN FAVOR, 1 ABSTENTION, PASSES

Other Business:

1. **Review and Approval of Revised Application Documents:** L. Ruest reviewed a proposal to revise the ZBA application packet with the Board noting changes (additional information required in order to accept a complete application and updated pages for variance and equitable waiver requirements meeting today's statutes).

MOTION: To approve the updated application packet dated 3/07 for use.

MOTION: P. YOUNG
SECOND: P. ROBART
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2. **2006-07 NH Planning and Land Use Regulation Handbooks** provided to Board members.

3. **Cherry v. Town of Hampton Falls** – Supreme Court Case Concluded –
Supreme Court Affirmed Decision of Superior Court

G. Comments or Questions from the Floor: No comments or questions were heard at this time. A member of the public was present who indicated that he is in the process of purchasing a property that might need ZBA attention.

H. Adjournment

MOTION: To adjourn the meeting at 9:03 p.m.

MOTION: C. LETO
SECOND: P. ROBART
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