

**PUBLIC HEARING AND BUSINESS MEETING**

- A. Call to Order - 7:00 PM:** R. McDermott called the meeting to order.
- B. Roll Call:** R. McDermott, Chairman; C. Leto, Vice Chairman; P. Young, Member;  
A. Dittami, J. Henebry, Alternate Members; L. Ruest, Secretary;  
R. Vigneau, Building Inspector/Code Enforcement Officer;  
Attorney Mark Beliveau  
NOT PRESENT: P. Robart, Member; T. Parker, Alternate Member

**C. Review Of The Minutes Of The Previous Meeting:**

**MOTION:** To approve the minutes of the January 27 and March 10 meetings as written.

**MOTION:** J. Henebry  
**SECOND:** C. Leto  
Unanimous

**D. Organizational Meeting**

1. Nomination of Chairman:

**MOTION:** To nominate and elect R. McDermott as Chairman for 2005-2006.

**MOTION:** A. Dittami  
**SECOND:** J. Henebry  
4 in Favor, Passes

2. Nomination of Vice Chairman:

**MOTION:** To nominate and elect C. Leto as Vice Chairman 2005-2006.

**MOTION:** R. McDermott  
**SECOND:** A. Dittami  
4 in Favor, Passes

R. McDermott stated he will not be available for the April meeting. J. Henebry expressed an interest in full membership on the Board. Recommendation will be forwarded to the Board of Selectmen for appointment.

**E. Public Hearings:**

1. **Case 05-03:** Application from **Shawn D. Grant** requesting relief from the Building Code, Section 7.1312 (in part), to permit construction of a replacement septic system in Zone A. (19 Birch Drive, Map 2, Lot 44)

Jed Shepard of NH Soil Consultants was present on behalf of the applicant. The applicant was not present. The Board allowed this hearing to proceed on the promise of the submission of application fees first thing in the morning. A letter of authorization is part of the file.

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J. Shepard displayed and distributed copies of color-highlighted plans to the Board. He identified the location of the property and noted that the property does not conform to zoning and that the new owner, Grant, will be correcting the nonconformance. There are a total of five bedrooms in this house which will be reconfigured to a three-bedroom home and two-bedroom apartment (the two apartments will be combined to one). The property is in need of an updated septic system.

J. Shepard reported that the system was installed approximately 20 years ago as a two-bedroom system. He identified its location, as well as the well and well radius, and noted that the existing leach field is one foot above the water table where two feet separation is required. The house is located on a large, eight-acre parcel of land. It is mostly wet with the exception of where the house is located. M. Cuomo witnessed test pits and the one test pit that passed was identified.

J. Shepard reviewed the constraints of this developed lot in trying to meet regulations. Of the 20,000 square foot receiving area, there is 4,900 square feet available that meets all setbacks. Of the required 5,000 square foot requirement, there is 1,855 square feet available that meets setbacks. J. Shepard noted that relief would be needed for any kind of septic system. He added that the proposed system exceeds state requirements. An EnviroSeptic system is proposed for the new location.

C. Leto expressed concern with the history of this property. R. Vigneau explained that he never heard of any problems with the system while the three dwelling units were occupied and that the new owner is planning to bring the property into compliance by having one primary and one accessory unit as allowed by zoning. In response to A. Dittami, J. Shepard reported that the septic system is not in failure per definition, but is old and will need replacement soon.

Hearing no further questions of the Board, R. McDermott opened discussion to abutters and members of the public. Andrew Gyorda, Crystal Drive, expressed his concern with the need for septic system replacements in the area lately and questioned whether this system would be adequate. J. Shepard explained that the system is to be constructed in an area outside of the wetlands identified by Mr. Gyorda. He stated that the impact of the system would be localized no matter where the leach field is placed, meeting town regulations. J. Shepard provided design information regarding the EnviroSeptic system at this time.

Hearing no further comments or questions, R. McDermott closed the public hearing. R. McDermott asked if a leach tube system could be placed. J. Shepard stated he could but would then need relief for the five foot fill extensions. J. Shepard assured A. Dittami that the proposed system design would work and not affect surrounding properties. He added that it is used statewide. The difference between this type of system and a tube system is that it needs to be vented. It was noted that this system is 40' further away from wetlands. J. Shepard reported that the existing septic system is to be abandoned. R. Vigneau added that this is an oversized system and is a proactive move on the part of the new owner. The permit for the new system will be valid for four years and can be constructed during that time. No further questions were heard from the Board.

**MOTION:** To approve the application from Shawn D. Grant for relief from Building Code, Section 7.1312 (in part), for replacement and improvement of a septic system in Zone A. (19 Birch Drive, Map 2, Lot 44)

**MOTION:** C. Leto

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**SECOND: P. Young  
Unanimous**

**Rehearing: Case 04-14 -- Ernest M. and Carole A. Cherry**

*Case 04-14: Application from Ernest M. and Carole A. Cherry for variances to the terms of Article III, Section 3.1; Article VI, all Sections; Article III, Section 8.4 and to Subdivision Regulations, Sections 7.9.3 and 7.9.4 (certain provisions therein) to permit the construction of forty eight condominium units of housing for the elderly and sixty condominium units of housing which shall have no age restriction (with other conditions). (289 Exeter Rd., Map 6, Lot 45)*

E. Cherry, Attorney B. Pelech, M. Decker, J. Gove of Gove Environmental Services, and C. Cherry were present. P. Young stepped down from the Board as she is an abutter.

Attorney Beliveau reported that it came to his attention on Wednesday afternoon that a ZBA member received a document from Planning Board Member C. Gordon. The document is that of a report prepared by Circuit Rider Planner Maura Carriel relating to litigation pending between the Town of Hampton Falls and Ernest and Carole Cherry. Attorney Beliveau explained that Mr. Gordon and Mr. Leto are friends and that the document came up in conversation. The document was meant for the Planning Board and not meant for ZBA members. Prior to the ZBA meeting, Attorney Beliveau called Attorney Pelech to inform him. Attorney Beliveau requested to go on record with this disclosure to the applicant(s) and public at large and asked if there were any questions or concerns.

Attorney B. Pelech verified that Attorney Beliveau disclosed this information to him and acknowledged that C. Leto is in receipt of the referenced document. He stated that he reviewed the document and that it is not relevant to this proceeding. Attorney Pelech agreed to C. Leto's remaining on the Board as long as C. Leto could state that the information would not influence his judgment. C. Leto stated the information would not influence his decision on this matter.

M. Decker started his presentation by asking that the Board incorporate previous exhibits and tapes furnished by the applicants into tonight's records. He asked for clarification of portions of the decision of November 19, 2004. Attorney Beliveau stated that this rehearing is procedurally equivalent to a new hearing. Instead of trying to reinterpret, he suggested this hearing be treated as a new application. M. Decker distributed a 111-item outline entitled "Request for Findings of Fact and Rulings of Law" and referred the Board to a television monitor where Christine Cherry would be showing a Powerpoint presentation. This meeting was video and audio taped.

R. McDermott expressed concern with providing a 111-item listing to the Board that hasn't had a chance to read it. M. Decker indicated that he plans to review each item and that the information is the same as presented in the past just arranged in a way for better understanding. Attorney Beliveau stated that it is unusual for a ZBA to be given such a large listing of findings of fact and rulings of law.

He stated that the Board is not required to issue or render findings of fact or rulings of law like the practice in Superior Court. Attorney Beliveau and M. Decker discussed the Board's function and role at this time. Attorney Beliveau stated that the Board would consider all evidence and make the best decision within its ability, but it would not separately respond to each of the 111 requests for findings of fact and rulings of law.

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E. Cherry referred the Board and public to the television monitor and explained aerial photos of the area proposed to be developed. He identified the property lines, existing structures and proposed location for new buildings.

At this time, M. Decker presented the 111-item document (in conjunction with the same items by way of a Powerpoint presentation on the television screen). A copy of this document is filed with the minutes in the Town Clerk's office as well as the ZBA file on this matter. During this presentation, J. Gove spoke to questions relating to available water supply and recharging of groundwater aquifers. An exhibit of actual water usage at a similar project in Atkinson, NH, was provided. R. McDermott asked whether the depth of wells was taken into consideration. J. Gove stated he obtained data, but did not separate it out or delineate it; it is construed as potable. A report regarding arsenic occurrence was also provided.

M. Decker indicated that the applicants would be amendable to the Board amending their application to grant relief but only for elderly housing with the stipulation that the same number of units (12) be set aside for low income elderly (presently 48 units elderly, 60 units multi and 12 of multi to be low/moderate income). E. Cherry stated that the sale price would be different from his project in Atkinson as there are different standards and figures change annually. M. Decker stated the Cherrys would not object to this amendment nor judiciously test it.

A five minute break was taken at this time.

M. Decker continued with his presentation. Referring to Item 61, A. Dittami asked if the applicant has any studies after 1994 that relate to the demographics of Hampton Falls as the exhibit used relates to Framingham, Massachusetts. M. Decker stated no. E. Cherry commented that when the nuclear power plant was constructed, it did not make property value decrease. M. Decker continued with his presentation.

An exhibit of the overlay district was displayed on the television. J. Gove provided an explanation of the areas of land removed for wetland, existing buildings, churches, etc. In response to A. Dittami's question as to how many units could be built on the available acreage (191) in the overlay district, E. Cherry responded that 670 units could be built. M. Decker continued with his presentation.

In closing, M. Decker thanked the Board for its time and consideration. Discussion was opened to members of the public. Hearing no comments or questions, R. McDermott closed discussion. Discussion was opened to Board members. J. Henebry asked Mr. Gove why the Town of Seabrook has such a shortage of water given the information provided tonight that indicates an abundance of available water. J. Gove replied that he did not do an analysis of the Town of Seabrook and indicated that he cannot comment on Seabrook issues but indicated that there has been little change over the time period studied. E. Cherry stated he felt the problem in Seabrook is that they won't spend money to drill wells. No further questions were heard from the Board.

**MOTION:** To deny the applicants' request for variance to the terms of Article III, Section 3.1; Article VI, all Sections.

**MOTION:** J. Henebry  
**SECOND:** A. Dittami

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J. Henebry and A. Dittami spoke to this motion as follows:

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

- Not convinced that an abutter on Exeter Road to the South or adjacent property to the West (Victoria Drive) would not be affected by increased traffic, site lines, environmental issues, safety and egress points. Each of these issues comes up in a resale situation.
- No evidence was presented that directly relates to circumstances in Hampton Falls or the property in question. Evidence was presented that the Cherry parcel would increase in value and because of this increase would increase surrounding property values. There is question as to whether this matter has been given full analysis as there is real possibility that property values would be hurt. The studies do not relate to experience and could not be concluded to be applicable to Hampton Falls.
- It was found that the evidence offered to be virtually nonapplicable (cities of New York, Chicago) and from times in the past. Value is derived from the rural nature of the community; the Cherrys themselves living in a very private location. Evidence was not found to be relevant, especially 1950 data.

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

- Granting the permit will be contrary to the public interest in that the safety issues, environmental issues, density issues are very important to the community and the public. Hampton Falls has designated a Multi-Family/Elderly District and voted in support of those locations.
- Much was made of the fact that the current Town of Hampton Falls laws are not valid. It would be against the public interest to do anything other than say the applicants' request does not qualify as it is against the spirit of the law to allow the building of a project such as proposed. It is not up to the Board to determine if illegal.

**3. Denial of the permit would result in unnecessary hardship to the owner seeking it. The hardship is not economic, it is a limitation imposed by the land itself; further:**

**(A)-Simplex case – applicants for a 'use' variance may establish unnecessary hardship by proof that:**

(1) A zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment;

- Agreed—given the unique setting, it does interfere with general use. .

(2) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and

- No evidence was provided that proved this property was burdened any differently than other situated property in the district. No unique conditions were found given the nature of the property as described. There potentially could be five or six other developments exactly like the Cherrys. This proposal would substantially change the character of the area and neighborhood placing a burden on water and soil. Some evidence was provided with respect to water and soil but did not relate to the conditions on the Cherry property or Hampton Falls or its affect to abutting properties.

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- The general purpose of zoning is to promote single-family and less dense build-up in certain areas of town.

(3) The variance would not injure the public or private rights of others.

- The Planning Board proposed an overlay district and the voters agreed with that choice and voted in favor of those locations. Granting the variance would certainly injure their right to a fair election process.
- The proposed development as a whole is inconsistent with the Town of Hampton Falls plan for the Town.

**4. Granting the permit would do substantial justice.**

- An injustice would be perpetrated on that corridor of Exeter Road. The residents in that area wouldn't define justice as dangerous intersections with increased traffic flow, lower resale values of their homes and potential water and sewer issues.
- No injustice would be done to the Cherrys by having them comply as others do. It would be an injustice to the people of the Town going against the wishes of the ballot box. No harm to the Cherrys but harm to the voters of the community. What people will build or not build on property is not telling of what people will spend. Much is driven by economics. No relation was made as to whether the zoning ordinances are inadequate.

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

- The spirit of the ordinance was implemented to protect the rural character of the town but more importantly to protect the sensitive natural resources that we enjoy and expect on demand.

No further comments were heard.

**VOTE: Unanimous**

**MOTION:** To deny the applicants request to Article III, Section 8.4,

**MOTION:** J. HENEERY  
**SECOND:** R. MCDERMOTT

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

- Abutters on all sides will be adversely affected by increased traffic, site lines, environmental impact and safety issues.

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

- Granting the variance would be contrary to public interest for reasons of public safety and environmental issues.

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**3. Denial of the permit would result in unnecessary hardship to the owner seeking it. The hardship is not economic, it is a limitation imposed by the land itself; further:**

**(A)-Simplex case – applicants for a 'use' variance may establish unnecessary hardship by proof that:**

(1) A zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment;

- It is agreed that the restriction is limited.

(2) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and

- The wetlands restrictions in place are to protect wetlands, wildlife, and nutrient absorption.

(3) The variance would not injure the public or private rights of others.

- The ordinance was established to protect wetlands, promoting open space and less densification.

**4. Granting the permit would do substantial justice.**

- The wetlands requirements are to protect against ourselves and we must be diligent.

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

- The ordinance is clear and definitive.

**VOTE: Unanimous**

**Other Business:**

1. REMINDER: Annual Spring Planning Conference, Saturday, April 9  
(Sign up ASAP, space limited - deadline April 1)

**G. Comments or Questions from the Floor:**

No comments or questions were heard from the floor at this time.

**H. H. Adjournment:**

**MOTION: To adjourn the meeting at 10:45 p.m.**

**MOTION: J. Henebry  
SECOND: A. Dittami  
Unanimous**