

PUBLIC HEARING AND BUSINESS MEETING

Call to Order - 7:00 PM: Vice Chairman Leto called the meeting to order.

Roll Call: C. Leto, Vice Chairman; J. Henebry, P. Robart, P. Young, Members;
A. Dittami, T. Parker, Alternate Members; L. Ruest, Secretary;
R. Vigneau, Building Inspector/Code Enforcement Officer;
NOT PRESENT: R. McDermott, Chairman;

Alternate Member T. Parker was designated a voting member for the Niver case and Alternate Member A. Dittami was designated a voting member for the Cherry matter.

Review Of The Minutes Of The Previous Meeting

MOTION: To approve the minutes of the March 24 meeting as written.

MOTION: J. Henebry
SECOND: A. Dittami
3 in Favor, 3 Abstentions, Passes

D. Public Hearings:

1. Case 05-04: Application from **Martha Niver** requesting relief from the Building Code, Section 7.1312 (in part), to permit construction of a septic system, in Zone A. (Map 5 Lot 43-3)

Attorney John Colliander, Septic Designer Don Graves and Martha Niver were present. C. Leto introduced the application as presented and Attorney Colliander distributed information packets to the Board.

Attorney Colliander explained that M. Niver acquired the property on Toppan Lane that was created by subdivision approval of the Planning Board on November 7, 1983 and recorded as C-11955. The packets include a copy of this plan and deed from the then owner, Toppan, dated November 10, 1983 and recorded at the Registry. M. Niver has owned the parcel since.

In 1986, M. Niver was going to build on this lot. She obtained approval for construction of a septic design. Review of the septic plan shows the lot approved for building and also shows a 20,000 square foot septic reserve area. The problem today is that in 1988, the wetlands conservation district went into effect and the 20k septic reserve area now intrudes into the 100' wetland buffer.

Referring to the color-highlighted plan, Attorney Colliander identified a "finger shaped" area of wetlands and 100' wetland buffer. He noted that the 20k area cannot intrude into the buffer which results in a split area. The lot is essentially upland, however, this corridor bisects the 20k area. Contiguous 20k area totals 14,400 square feet. It was also noted that the corridor is not suitable for receiving area as the seasonal high water table is 21-22" on average where 24" is required. Attorney Colliander explained that the yellow-highlighted area satisfies the 5,000 square foot area that is contiguous and meets regulations. The area outlined in red includes area

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for the 20k reserve. All of the 14,400 sf of septic reserve area is outside the wetland buffer. Request is for approval to reduce the 20k area to 14,400 square feet.

Attorney Colliander referred the Board to a statement prepared as part of the packet. Relief is requested from the Building Code where two criteria need to be met. He indicated that to enforce the regulations would do manifold injustice to the applicant as the property was purchased in 1983 and the applicant now wants to build. The tax card shows the property has been taxed at full value over the years. He added that the request is not contrary to the spirit of the Building Code in that the Building Code ensures public health and safety. The plan submitted clearly shows that the parcel can handle a septic system.

C. Leto asked if the area to the left on the plan has been reviewed and whether this area could be added to the existing septic reserve area to obtain contiguous square footage. D. Graves stated that this area is densely wooded and that access would be difficult. He stated that Jim Gove of Gove Environmental Services did walk the area and found it high and dry. Attorney Colliander stated that if this area is identified as suitable receiving soils, the parcel would meet requirements.

A. Dittami asked if the 20k contiguous area could be reached by relocating or resizing the house and well in order to be in conformance with the Building Code. Attorney Colliander and Don Graves could not say for sure as another "finger" of wetland area might be found. D. Graves stated that approximately 75% of the lot has been explored to this point where it was identified that a house and septic area could be placed.

Information was provided to the Board on the type of septic system proposed as well as area to replace the system if needed in the future. R. Vigneau stated that the Planning Board, when creating lots today, requires each lot to stand on its own merits providing area for passing test pit(s), well radii and a building footprint outside of the 20k area. Attorney Colliander noted that in 1984 the town regulations did not include a wetlands conservation district. The applicant is willing to place a restriction of a three-bedroom, 3,000 square foot home on this approval. Discussion of the requirement to requalify test pits took place addressing the question of grandfathering.

Hearing no further comments from the Board, discussion was opened to abutters and members of the public. No comments were heard. C. Leto acknowledged receipt of letters from two abutters, Toppan and Doyle, objecting to the size of the proposed home. The Board indicated that the size of the home is irrelevant and these letters will be made part of this file. Hearing no further comments, C. Leto closed the public hearing.

A. Dittami stated that the information provided that a portion of the parcel has not been checked for a contiguous 20k area puts the Board in an awkward position. Attorney Colliander agreed and indicated that he would like to request continuance of this hearing to allow time to determine if there is additional area that meets requirements for a suitable septic reserve.

MOTION: To accept the applicant's request to continue this hearing to the Board's May 26 meeting.

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**MOTION: P. YOUNG
SECOND: T. PARKER
UNANIMOUS**

Other Business:

Request for Rehearing – Ernest M. and Carole A. Cherry

P. Young and T. Parker stepped down as abutters. A. Dittami was designated a voting member. C. Leto noted that rehearings are granted only if the petitioner can demonstrate the ZBA made technical errors or provides new evidence. This is administrative on the part of the Board. Should the Board feel errors have been made the request should be granted. As the petitioner confirms that he is not offering new evidence and should the Board not feel errors were made in the decision, the request should be denied.

MOTION: To deny the request for rehearing.

**MOTION: J. HENEERY
SECOND: A. DITTAMI
4 IN FAVOR, PASSES**

P. Young and T. Parker resumed their seats on the Board.

Comments or Questions from the Floor: No comments or questions were heard at this time.

A. Dittami requested the Board consider a suggestion he has for reviewing cases before the Board. Following discussion of ideas presented by members, the Board agreed to A. Dittami writing up and presenting his suggestion at the Board's next meeting on May 26. This information will also be reviewed by counsel.

Adjournment

MOTION: To adjourn the meeting at 8:02 p.m.

**MOTION: T. PARKER
SECOND: A. DITTAMI
UNANIMOUS**