

PUBLIC HEARING AND BUSINESS MEETING

A. Call to Order - 7:00 PM: Chairman Berkowitz called the meeting to order.

B. Roll Call: E. Berkowitz, Chairman; R. McDermott, Vice Chairman;
M. Caruso, B. Richards, P. Young, Members; L. Ruest, Secretary;
R. Vigneau, Building Inspector

E. Berkowitz took a moment to express sincere appreciation for Ralph Foster who passed away on May 18. He stated that the Zoning Board of Adjustment and the Town of Hampton Falls has suffered a tremendous loss of a good friend whom it will be impossible to replace.

C. Review Of The Minutes Of The Previous Meeting:

MOTION: To approve the minutes of the March 25 meeting as written.

MOTION: R. McDermott
SECOND: B. Richards
Unanimous

D. Public Hearings

1. Case 04-06: Application from **T. Frank Marchell and Cynthia A. Wojcicki** for Variances to the terms of the Building Code, Sections 7.1312 and 7.1314 and that these terms be waived to permit replacement of a failed septic system that does not meet the 20,000 sq ft and seasonal high water table requirements. (33 Pages Lane, Map 7 Lot 39)

Cynthia Wojcicki and Anne (Tocky) Bailobrzkeski of Stockton Services were present. Tocky explained that variances are requested to allow a replacement septic system on a non-conforming lot. She noted that 25' setbacks are being used. Review of M. Cuomo's report of May 6, 2004 identified the need for the two variances as requested. Tocky noted that a waste water system that allows for pre-treatment has been designed.

In response to E. Berkowitz, it was explained that the Town of Seabrook does not offer sewer service to residents of other towns, but does offer water. C. Wojcicki stated she has asked the Town of Seabrook for sewer service a number of times and has been denied.

Hearing no further comments from the Board, E. Berkowitz opened discussion to abutters and members of the public. No comments or questions were heard. E. Berkowitz closed the public hearing.

MOTION: To grant the application from **T. Frank Marchell and Cynthia A. Wojcicki** for Variances to the terms of the Building Code, Sections 7.1312 and 7.1314 to permit replacement of a failed septic system that does not meet the 20,000 sq ft and seasonal high water table requirements. (33 Pages Lane, Map 7 Lot 39)

MOTION: B. Richards
SECOND: P. Young
Unanimous

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2. **Case 04-07:** Application from **Richard A. Delano and Nancy E. Roka** for a Variance to the terms of the Zoning Ordinance, Article III, Section 3.8.2 and that these terms be waived to permit continuation of an existing setback of less than 25 feet. (68 Exeter Road, Map 2 Lot 79)

Richard A. (Tony) Delano and Nancy E. Roka were present. T. Delano referred the Board to the sketch provided with the application. He reported that the lot is 1.07 acres with 25' side line setbacks. The existing garage is approximately 18' from the property line. He noted that he purchased the home six years ago and that he would like to expand the kitchen to the existing garage area and construct a new garage toward the front along the same line 18' from the property line for approximately 32 feet (24' for the garage and 8' for the kitchen). An 18-foot wide garage is planned. This will keep the building consistent with the driveway and still maintain the 75' well radius and septic reserve area.

E. Berkowitz inquired as to the age of the septic system. T. Delano stated the house was constructed in 1958 and he is not aware if it is the original system or not. N. Roka added that there is wetland area behind the house with no opportunity to build in the back yard and that the front yard would comprise a 20k reserve area for future septic. T. Delano reported that the location of the dry well is known. There are two, one active and one inactive.

E. Berkowitz inquired as to the distance of the existing garage to the existing dwelling owned by R. Aldrich. T. Delano reported there is approximately 100' between houses. R. Aldrich stated he has no objection to the proposal as long as it stays within the existing line.

T. Delano provided the Board with another sketch he prepared for his use showing the existing well radius, dry well with 5k and 20k areas (unconfirmed by professional), setbacks and building. He does not have professional plans showing these conditions. This sketch was provided for the file.

Hearing no further questions from the Board, E. Berkowitz opened discussion to abutters and members of the public. No comments were heard at this time. E. Berkowitz closed the public hearing.

The Board reviewed the five criteria for granting a variance at this time.

1. No diminution in value of surrounding properties will be suffered. 5 Agreed
2. Granting the permit would be of benefit to the public interest. 5 Agreed
3. Denial of the permit would result in unnecessary hardship to the owner seeking it. 5 Agreed.
4. Granting the permit would do substantial justice. 5 Agreed.
5. The use would not be contrary to the spirit of the ordinance. 5 Agreed.

MOTION: To approve the application from **Richard A. Delano and Nancy E. Roka** for a Variance to the terms of the Zoning Ordinance, Article III, Section 3.8.2 to permit continuation of an existing setback of less than 25 feet with the condition that encroachment into the setback is no closer than 18 feet. (68 Exeter Road, Map 2 Lot 79)

MOTION: R. McDermott
SECOND: B. Richards

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Unanimous

3. Case 04-08: Application from **Donald Jasinski**, by Attorney Michele Peckham, for a Variance to the terms of the Zoning Ordinance, Article III, Section 11.3 and that these terms be waived to permit elderly housing outside the overlay district. (Lafayette Road, Map 8 Lot 92)

Attorney Michele Peckham, Donald Jasinski, C. Mutrie and S. Sicard were present. E. Berkowitz stated that unnecessary hardship must relate to the owner and not to an option holder. Based on application documentation and a purchase and sales agreement in place, it appears that this request is for an option holder and not the owner of the property. Review of RSA 674:33, 13. Unnecessary hardship (page 330 of the Land Use Regulations) took place at this time. Attorney Peckham stated she felt that the variance could be handed from property owner to property owner. If the current owner sells the property, the variance would benefit the next owner. E. Berkowitz disagreed with Attorney Peckham's position noting that the statute states the hardship is to relate to the owner, but allowed discussion to continue reserving the right to seek advice of counsel which might have an affect on the outcome of this hearing.

Attorney Peckham read a 12-page Memorandum in Support of Application for Variance dated May 27, 2004 submitted with this application. The memorandum includes Facts, support of the five criteria for granting a variance and Conclusion.

M. Caruso inquired as to the number of units proposed for this site. C. Mutrie stated the number would depend upon whether waivers could be granted, but estimated twelve. A copy of a realtor's advertisement for an area project was provided to the Board as example of the style of building proposed. D. Jasinski stated that due to the wetland buffers, half the parcel will remain as wilderness and wetlands and undeveloped. The character of the land will essentially remain the same.

E. Berkowitz stated that the voters approved an overlay district in March, 2004. The ZBA is to consider granting relief from zoning, not creating zoning. He added that he is not aware of the reasons why the overlay district was designated as it is and that many parcels were not included. The applicant is asking the Board to take a parcel not in the overlay district and grant it all rights contained in a different zone. M. Caruso stated that he was part of the work sessions that created the ordinance. The reason for exclusion of certain lots was traffic. The intersection of concern was Route 84 and not Route 88 as presented by Attorney Peckham. M. Caruso agreed with E. Berkowitz noting his concern that the applicant is asking to apply regulations allowed in another zone to this parcel. P. Young stated that a commercial use will have an impact on traffic as would the proposed use. She indicated that her concern is that of the statute issue raised at the beginning of this discussion and that there is no reason to go any further.

Discussion was opened to abutters and members of the public at this time. L. Stan of Meadow Lane stated she is in favor of elderly housing, but has concerns with the safety of the elderly, traffic, wetlands, and flooding of the area as well as potential decrease in value of her property. She asked that the ordinance be upheld and the area not be rezoned. M. Kenney of Meadow Lane expressed concern with providing adequate septic for this use. S. Sicard reported that a soils analysis has been done with test pits witnessed by M. Cuomo. All has been approved by the Department of Environmental Services and Town of Hampton Falls. M. Caruso noted that the septic does not meet Town regulations, however, that a variance was granted reducing the 20k septic reserve area. B. Richards noted that the information

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presented describes condominiums for a 55 and older development; or a condo project veiled by elderly housing.

Attorney Peckham noted that traffic issues will be a factor in the overlay district as well and that in speaking with the Town's Circuit Rider Planner, the river was used as a cut-off line for the district. Wetlands issues will be addressed by local and state regulations. Attorney Peckham offered the results of studies done with respect to the value of surrounding properties to a use such as this.

E. Berkowitz asked C. Mutrie why condos are not considered for this parcel. C. Mutrie stated that little of the land qualifies for condos.

Suggestion was made to continue this application to the Board's June 24 meeting to seek advice of counsel.

MOTION: To continue this application to the Board's June 24 meeting to seek advice of counsel.

MOTION: B. Richards
SECOND: R. McDermott
Unanimous

F. Other Business: No other business was discussed at this time.

G. Comments or Questions from the Floor: No further comments were heard from the floor.

H. Adjournment

MOTION: To adjourn the meeting at 8:22 p.m.

MOTION: B. Richards
SECOND: R. McDermott
Unanimous