

**PUBLIC HEARING AND BUSINESS MEETING**

**A. Call to Order - 7:00 PM:** E. 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

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

**MOTION:** To approve the minutes of the May meeting as written.

**MOTION:** R. McDermott

**SECOND:** P. Young

**Unanimous**

**D. Public Hearings**

**1. 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)

Donald Jasinski, Attorney Michele Peckham, Charles and Beverly Mutrie and Steve Sicard were present. This hearing is continued from last month. E. Berkowitz asked what makes this parcel special or different from all other property in the Town that is outside the overlay district that would make this parcel qualify in a district that is not permitted. Attorney Peckham stated that special conditions apply to the parcel itself and not to all other land in Hampton Falls. She added that with the Simplex decision, the hardship applies to the land itself. She noted the location is the issue here. The parcel is located along Route 1 which is where the drafters of the ordinance chose to place the overlay district for reasons of access to transportation and services. She showed photos indicating that this parcel is located within an area of limited commercial development. Attorney Peckham also stated she feels this location makes the parcel "intoned" for elderly housing development. M. Caruso stated that one reason this section of Route 1 was excluded was due to the traffic congestion on Route 1 and at the Route 84 intersection.

E. Berkowitz asked Attorney Peckham to address Article 11.5.2 of the zoning ordinance relative to elderly housing in that provision is required for pedestrian access to off-site community services. Attorney Peckham stated her clients intend to fully comply with the ordinance. E. Berkowitz noted that Hampton Falls does not have sidewalks throughout town. He added that the applicant is asking the ZBA to rezone property that voters approved in March, this year, which excludes this parcel upon recommendation of the committee.

M. Caruso expressed concern with granting the variance as requested or rezoning and setting a precedent. He added that there are zones for a reason. Referring to Section 11.1, it was noted that this parcel falls within the corridor along Routes 1 and 95. Attorney Peckham offered case information involving a zoning board granting a variance for a use a parcel was not zoned for. Referring to RSA 674.33, E. Berkowitz stated that a Zoning Board needs to consider hardship and that there is no other use for the property. There are other potential uses for this property. Attorney Peckham disagreed and stated that is not the standard anymore. She stated that

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since the Simplex decision, the Board needs to take into consideration whether the ordinance unreasonably interferes with the use of the property.

Hearing no further questions of the Board, E. Berkowitz opened discussion to abutters and members of the public. A. McKeon, owner of the residential property to the north, asked if the overlay district is extended, can any type of elderly/multi-family development be built on the property or is it restricted to elderly and the 12 units discussed this evening. The Board informed him that the variance, if granted, would be for elderly. Mr. McKeon noted concern with negative impact on his property value. L. Macionski, member of the public, identified the location of two properties he owns. He stated that most properties within the overlay district have existing structures on them. He stated he felt that vacant parcels should have been the place to designate the overlay district and supported the applicant's request to add this vacant parcel to the overlay district. Attorney Peckham reviewed the results of her research with respect to five lots she feels will qualify along Route 1. She noted that she did not review the lots along Route 95. M. Caruso asked if this request is granted whether this lot meets other requirements of the ordinance. Attorney Peckham stated this lot has 5+ acres and adequate frontage.

Hearing no further comments, E. Berkowitz closed the public hearing. The five criteria for granting a variance were reviewed at this time.

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

**MOTION:** To grant the applicant's request for a Variance to the terms of the Zoning Ordinance, Article III, Section 11.3 to permit elderly housing outside the overlay district (Lafayette Road, Map 8 Lot 92) with the following conditions:

1. That the 12 unit elderly housing project meets all other regulations.
2. That based on the last sentence of Section 11.1, the Board finds that the design of the section is to implement multi-family and elderly housing within the corridor of Route 1 and Route 95 providing for reasonable access to commercial services and transportation.

**MOTION:** B. Richards  
**SECOND:** P. Young  
**3 in Favor, 2 Opposed, Passes**

**2. Case 04-09:** Application from **Lawrence Macionski and Kathleen Beauregard** for a Special Exception to Article III, Section 10 to allow erection of an amateur radio tower and an Equitable Waiver of Dimensional Requirements to Article III Section 10.4 and asks that said terms be waived to permit a 100 percent setback rather than the required 125 percent. (2 Crestview Drive, Map 7 Lot 13)

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Lawrence Macionski and Kathleen Beauregard were present. L. Macionski explained that he is a 39-year licensed ham radio operator and that he would like to erect an antenna tower at his property on Crestview Drive. He reviewed federal and state rules, regulations and laws with respect to amateur radio operation. He referred the Board to numerous documents he submitted with his application supporting his rights as an amateur radio operator. He stated he felt that the ZBA is precluded by law to regulate his use of his federal radio installation.

E. Berkowitz informed Mr. Macionski that the ZBA doesn't create zoning nor regulate it, but does grant relief from rules and regulations. L. Macionski stated he felt the rules of Hampton Falls limit him from obtaining a building permit to put up an antenna and added that he doesn't feel he needs a permit and that the ordinances are in violation of federal law.

Discussion took place with respect to the height of the antenna. L. Macionski stated that the tower is subject to sections up to 75-80' and his ability to afford the purchase. The sketch provided by the applicant shows two potential locations for the tower. One location meets the 125% setback from property boundary lines, however, would block the view from a bedroom window. The other location does not meet the 125% setback and request is made for relief from the 125% setback. The proposed tower is 68' from the property line. E. Berkowitz noted that the applicant requested an Equitable Waiver of Dimensional Requirements and indicated that it doesn't apply to this situation. Question was raised as to whether the Board can act on this request given that notice may be improper.

L. Macionski stated he identified that a 54' antenna can be placed that would meet Town regulations but that he feels this limits him and that is contrary to federal law.

Lengthy discussion took place with respect to what the federal and state government allows for amateur radios and towers. L. Macionski presented information from documents he submitted with his application. Discussion also took place with respect to a tower's ability to withstand storms.

Discussion was opened to abutters and members of the public. Connie Kuzmier of Kensington Road stated her concerns with negative impact on the value of her home, the unsightliness of the tower and safety concerns with respect to the tower falling. Karl Brommer of Kensington Road introduced himself as a radio transmission expert. He noted that he has a PhD from MIT and has great knowledge in this area. He submitted a packet of material for the Board's consideration. He notes four issues relating to the height, design, type of communication system and concern with the ability to record baby monitors, telephones, security systems and computer networks. He offered technical information in layman's terms and expressed concern with safety especially during ice storms. He reviewed the documents presented and asked the Board to consider the information in relation to the small, closely spaced, development. He also noted that the community should be made aware of the possibility of the radio operator to perform surveillance.

Dave Burditt, abutter, stated he is not in favor of this tower and is disturbed with the information that the federal government can tell abutters they have to accept this. He also stated that this will be a large structure and not something that is hidden behind bushes. Rachel Grogan, Kensington Road, stated her concern of the negative influence of the tower on the value of her home. Allison Field, Kensington Road, noted that her home is for sale at present and is concerned with the property values in a densely populated subdivision. She stated she felt it would be better placed on a larger parcel and noted concerns with safety as well. Malcolm Bell, Kensington Road, stated his concern with devaluation and unsightliness.

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L. Macionski in rebuttal identified that he has professional top secret clearance and works with computer systems. He noted that over 39 years, he has had no violations or complaints against him.

P. Young stated that L. Macionski indicated that he is operating a ham radio from his home now. She asked what the purpose of the tower is if he is already communicating now. He stated the tower will allow use of directional antenna for efficiency. At present, he is limited to a number of frequencies available. He added that he enjoys this hobby and is available for emergencies and volunteering. He stated that his homeowner's insurance covers antennas.

A. Field, Kensington Road, reviewed information she obtained from the Internet with respect to safety, towers, location, distances, etc. Specifically, she noted the need to consider electrical lines before installation. K. Beauregard stated that L. Macionski has the right to have a tower and that she would be willing to have it obstruct the view from the bedroom window.

E. Berkowitz suggested the Board take time to review and consider the information presented.

**MOTION:** To continue this application to the Board's July 22 meeting.

**MOTION:** R. McDermott  
**SECOND:** B. Richards  
**Unanimous**

**F. Other Business**

E. Berkowitz acknowledged R. Vigneau's report for the month of May.

**Hirsch/Winn v. Town of Hampton Falls:** E. Berkowitz acknowledged a letter from Attorney Barton Mayer of Upton and Hatfield indicating that the court has ruled that the motion for rehearing was deficient; that it failed to follow the time period for objection to the ZBA's December 18, 2003 decision.

**Scott Blood, Stard Road, Removal of Trailer:** The deadline for removal of the trailer is July 12. Code Enforcement Officer R. Vigneau plans to send a letter the first of July.

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

**H. Adjournment**

**MOTION:** To adjourn the meeting at 8:59 p.m.

**MOTION:** R. McDermott  
**SECOND:** M. Caruso  
**Unanimous**