

**A. Call to Order - 7:00 PM:** Vice Chairman McDermott called the meeting to order.

**B. Roll Call:** R. McDermott, Vice Chairman; M. Caruso, C. Leto, B. Richards, P. Young, Members; J. Henebry, Alternate Member; R. Vigneau, Building Inspector; L. Ruest, Secretary  
Not Present: T. Parker, Alternate Member

J. Henebry was designated a voting member.

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

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

**MOTION:** P. Young

**SECOND:** C. Leto

**4 IN FAVOR, 1 ABSTENTION, PASSES**

**D. Public Hearings**

**1. 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)

L. Macionski, K. Beauregard and Attorney Jack Leonard of Rye Beach were present. This application is continued from the Board's August meeting. Attorney Leonard noted that the Board has been supplied with a detailed report booklet, pictures and diagrams for review. He restated reasons for the request of the applicant to erect an amateur radio tower. He added that the applicant is active in public affairs and public service and is certified with the power plant. The applicant wants extra radio frequency and can achieve this by the height of the tower. The tower is anchored in concrete as well as attached to the home to restrict its ability to fall.

R. McDermott acknowledged receipt of the items listed by Attorney Leonard, however, asked him to address the issue of the 125% fall area as it is not addressed in any of the documents. L. Macionski referred to the Town of Hudson ordinance noting that he felt the Hampton Falls' ordinance is flawed in that it measures the full height of the tower and not the length from where the tower is attached to the structure. R. McDermott asked the applicant to address the requirements of Hampton Falls. L. Macionski stated that he felt the Hampton Falls ordinance doesn't provide a clear definition. Attorney Leonard stated that he felt the way the tower is constructed will satisfy Hampton Falls with respect to safety and appearance.

L. Macionski reported that the full height of the tower is (from base to top) 68 feet. Twenty-one feet is above the attachment point. In order to meet the 125% requirement the tower would need to be a 54.4' tower. In response to R. McDermott, L. Macionski stated that he would achieve lower frequencies with the lesser height (approximately 40 – 50%).

Resident Kris Kliegle identified himself as the Emergency Coordinator for Rockingham County. He provided the Board with information as to what the increase in height of the tower would allow with respect to wave length, quality and ability to communicate to most. L. Macionski stated that 68' is a compromise and less than he wanted, however, is about as much as he can afford.

L. Macionski acknowledged that he can meet the 125% requirement with the 68' tower, however, the securing of the tower is better in the other location. R. McDermott noted that the Board is concerned with safety and health issues with respect to the community, however, doesn't want to interfere with reasonable use of amateur radio. Discussion was opened to members of the Board.

C. Leto noted that he understood that 68' is better than 54' with respect to quality, however, the applicant has not yet proven a hazard would not be produced if the tower is not secured. L. Macionski referred the Board to a drawing in Section 10 of the booklet showing the tower would bend like a knee from the attachment point. R. McDermott asked if there is an engineering guaranty that the tower will not fall its full height. No guarantee was given. L. Macionski noted that of the four directions the tower could fall, only one direction is of issue. The other directions can meet the 125% requirement.

K. Beauregard indicated that she is still okay with the tower at the bedroom window location. L. Macionski explained the way in which the tower would need to be anchored if placed in this location as compared to the alternate location. The Board was referred to Section 8 of the booklet at this time with respect to fall zone and definition of tower. It was noted that a tower supports an antenna. The overall height of the tower and antenna is 68' in height.

R. McDermott stated that the applicant has been using the term "variance" when in fact it is a special exception that is needed. It was also noted that the applicant requested an Equitable Waiver of Dimensional Requirements with regard to the 125% requirement, when in fact, a variance should have been requested. L. Macionski stated that he filled out the application as he thought necessary. To his knowledge, he was applying for a variance.

No further comments were heard from the Board. Discussion was opened to abutters and members of the public. Abutter C. Kuzmier referred the Board to a written summary she submitted that includes issues relating to safety and incompleteness of the application. She reviewed this summary item by item at this time and presented a picture of one type of antenna used on towers. Attorney Leonard took exception with the picture submitted and indicated that the abutter is not qualified as a structural engineer. R. McDermott asked the applicant to address the issue of a rotating antenna at this time. L. Macionski stated that a rotating antenna is not a weak point if properly engineered and noted that the attachments are the same if the antenna is to rotate or not. M. Caruso asked if the applicant could obtain an engineer stamped design to submit to the Building Inspector. L. Macionski stated no but that the bracket is a manufactured part.

Abutter Ivy Burditt noted her concern with the location of the tower and that she would prefer a location with less visible wires. Member of the public, Don Janik, supported the need for 125% fall area given that the rotating part of the tower/antenna could blow further than talked about this evening. K. Kliegle explained the rotor shelf and how it is attached to the tower. Steven Smith, abutter at 3 Woodlawn, asked whether the width of the antenna impacts the fall zone and whether this is an issue.

The proposed antenna was identified as an 18' foot antenna, nine feet on either side. Following discussion, S. Smith stated he felt that this would impact the fall zone and that he is concerned. Abutter R. Grogan expressed her concern with negative influence on neighboring properties.

M. Caruso reminded those in attendance that the application is not asking for something that is not allowed in the ordinance. The ordinance requires a special exception be approved before obtaining a building permit.

Attorney Elizabeth Bassett, representing C. Kuzmier, asked if a flat antenna adds to the length of the tower when it falls. C. Kuzmier asked who oversees whether the structure is sound. M. Caruso stated that the Building Inspector can require information as needed and the applicant can provide data needed. The Building Inspector can also inspect the connection to ensure it is fastened properly. Hearing no further questions, R. McDermott closed the public hearing

**MOTION:** To grant a Special Exception to Article III, Section 10 to allow erection of an amateur radio at 2 Crestview Drive, Map 7, Lot 13 with the condition that the applicant erect a tower that meets town regulations at this time.

**MOTION:** P. YOUNG  
**SECOND:** M. CARUSO  
**UNANIMOUS**

Moving on to the request for Equitable Waiver from Dimensional Requirements, the Board agreed that the applicant should have applied for a variance to the 125% requirement.

**MOTION:** To grant the applicant's request for 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)

**MOTION:** P. YOUNG  
**SECOND:** M. CARUSO  
**5 Opposed, Does NOT Pass**

Discussion of the applicant's request to return fees associated with this application took place at this time. Attorney Leonard withdrew this request and the Board denied the request.

**2. Case 04-11:** Application from **John F. Sanborn Jr and Mary V. Sanborn** for a Variance to Article III, Section 3.7.2 and asks that said terms be waived to permit a reduced frontage lot in Zone A. (Sanborn Road, Map 6 Lot 4)

John Sanborn, Chandler Sanborn, Henry Boyd of Parker Survey, Real Estate Agents Dot Milbury and Donna Carter and Mrs. Depeters were present.

H. Boyd presented the plans. He referred the members to a copy of the tax map first to identify the size and shapes of the lots in question. He then referred the Board to the current conditions of the lots and the proposed plan to adjust the lot lines. This request is to have one lot with frontage less than the required 250 feet. H. Boyd showed the limitation in using the 187' area of frontage as access to the

larger lot. Distance and wetlands are of issue and the separate area of frontage does not serve the larger lot at present.

Suggestion is made to take the total frontage of the two lots, applying 500' to the smaller lot and 163' to the larger lot. The "t" shaped area of the larger lot is to be conveyed to the smaller lot. This results in a 13.2 acre lot and a 32.4 acre lot. H. Boyd presented a copy of a subdivision plan dated 2001. This is not an approved plan, but rather a proposed plan drawn in the past and never submitted to the Planning Board. Extensive soil work was done that resulted in a three lot subdivision with a new road. Additionally, a request for relief to private road subdivision requirements was reviewed by the ZBA this year and denied. This proposal provides for three lots on 45 acres without a new road.

The applicants are proposing one house on the larger lot with a restriction of no further subdivision. H. Boyd acknowledged, however, that the lot is less conforming. H. Boyd added that John Sanborn does not want to subdivide the smaller parcel himself, but would like the ability to subdivide in the future. Soils work has been done to prove two buildable lots. All other current regulations have been complied with. The proposed future lots would be 6.5 acres and 6.75 acres. The overall size of the newly created lot will allow the property to stay in current use.

R. McDermott noted that a lot line adjustment is a Planning Board issue. H. Boyd stated that the Planning Board cannot create a lot with less than 250' frontage, but noted he felt that he has brought the lots into more compliance with the regulations. The proposal does not meet the 250' road frontage requirement. M. Caruso expressed his concern with setting a precedent by approving this request. R. Vigneau restated that the larger lot is non-conforming now given that it has split frontage. Although the proposal is to have less than 250' frontage, it being contiguous would be better use of all the land combined. H. Boyd indicated that the owners are not interested in the road scenario and that the buyers are willing to have one larger lot. In reply to P. Young, H. Boyd stated that the sliver of land identified as Tax Map 6, Lot 2 is owned by the town and has a restriction never to be developed.

Discussion was opened to abutters and members of the public. Abutter D. Janik expressed that he agreed with the Board's position. He added that if the owners choose to develop three house lots, they need to meet regulations. D. Janik stated he would like to see one house with the restriction of no further development.

M. Caruso stated again that the owners can develop one house on either parcel and that he is concerned with setting a precedent. He suggested seeking advice from counsel. P. Young asked if the owners could build on the large lot now and come back for a lot line adjustment as proposed here. It was explained that the Planning Board cannot create a lot that is less conforming. In other words, the proposed lot line adjustment cannot be addressed or approved until relief is granted.

**MOTION:** To continue this application to the Board's October 28 meeting and forward this matter to counsel for opinion.

**MOTION:** M. CARUSO  
**SECOND:** P. YOUNG  
**UNANIMOUS**

**F. Other Business:**

**October Meeting:** P. Young and J. Henebry informed the Board that they will be unable to attend the October meeting.

**ZBA Rules and Procedures:** In conjunction with a Hampton Union newspaper article regarding an issue of a board member speaking as an interested party once recused from the North Hampton ZBA, the Board agreed to review its rules and procedures. Suggestion was made to ask this question of Attorney Bart Mayer.

**Nomination and Election of Chairman and Vice Chairman:**

Given Chairman Berkowitz's resignation, the Board addressed the need to identify a Chairman and Vice Chairman.

**MOTION:** To nominate and elect R. McDermott as Chairman.

**MOTION:** M. CARUSO  
**SECOND:** C. LETO  
**UNANIMOUS**

R. McDermott accepted.

**MOTION:** To nominate and elect P. Young as Vice Chairman.

**MOTION:** R. MCDERMOTT

P. Young respectfully declined. It was suggested to put this matter off until the next meeting.

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

**H. Adjournment**

**MOTION:** To adjourn the meeting at 10:00 p.m.

**MOTION:** M. CARUSO  
**SECOND:** R. MCDERMOTT  
**UNANIMOUS**