

PUBLIC HEARING AND BUSINESS MEETING

A. Call to Order - 7:00 PM

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

Five voting members were present for this meeting. On certain applications, there will be occasion where one member will need to step down. This allows for a quorum (four voting members), however, applicants have the opportunity to request continuance to a meeting where a full five-member board can be present.

C. Review Of The Minutes Of The Previous Meeting

MOTION: To approve the minutes of the September meeting as written.

MOTION: M. Caruso
SECOND: C. Leto
Unanimous

D. Public Hearings

1. **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)

Owner John Sanborn, Real Estate Agent Dot Milbury, H. Boyd of Parker Survey, Buyers Mr. and Mrs. Depeters and Real Estate Agent Donna Carter were present. B. Richards stepped down as an abutter.

H. Boyd displayed the plan and noted that this hearing is continued from September. The decision of the Board at that time was to seek advice of counsel. H. Boyd provided a summarized presentation for T. Parker's benefit as he was unable to attend last month's meeting. Discussion was opened to members of the Board. C. Leto stated that his issue remains the same; creating a lot with less than required frontage. T. Parker questioned how H. Boyd addresses the appearance that the desire to subdivide is purely economic which has no standing in hardship. H. Boyd stated that hardship is inherent in the land given the expanse of wetlands on the parcel. T. Parker stated that the parcel is a buildable lot under the current ordinances and the owners are not being denied the use of the land but rather wish to subdivide for economic reasons creating an additional building lot.

H. Boyd referred to a non-approved proposal of a plan to bring in a road for a three-lot subdivision and noted that town services are being taxed to meet the letter of the zoning ordinance. He added that he feels this proposal improves the situation and noted that the lot was created before two-acre zoning regulations. T. Parker indicated that this could apply to other parcels in town. M. Caruso restated his concern of setting a precedent. He noted that there are situations of subdivisions with backland that would fall within the same issue and agreed that this proposal is for economical gain.

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Discussion was opened to abutters and members of the public. No comments were heard. R. McDermott closed the public hearing. H. Boyd requested a copy of the attorney's opinion received by the Town. He was informed that it is a client-privileged document and no copy would be provided to him. Given that the discussion appears to be heading toward a denial, H. Boyd requested continuance of the application to allow him time to seek further advice.

MOTION: To grant the applicant's request to continue this hearing to the Board's November 18 meeting.

MOTION: R. McDermott
SECOND: M. Caruso
3 in Favor, 1 Opposed, Passes

B. Richards resumed his seat on the Board.

2. **Case 04-12:** Application from **Lee Ann and Allen McCarthy** for a Variance to the Building Code, Section 7.1312 and asks that said terms be waived to permit (installation of) a replacement septic system, in Zone A. (Brown Road, Map 5, Lot 5)

Lee Ann and Allen McCarthy were present. Jed Shepard of NH Soil Consultants displayed and presented the plan. He explained that the property is an existing old farmhouse on a parcel of five acres. The system is antiquated and stressed and in need of replacement. He identified the suspect location of the existing well in proximity to the existing tank/leachfield.

The applicants are seeking to add a fourth bedroom and therefore are planning a replacement plan for a four-bedroom system. All testing has been done and soils have been confirmed. A location of soils meeting town standards has been found with 6,000 square feet available. The problem at hand is that 14,100 square feet of reserve area is available rather than the 20,000 square feet required. No other variances are needed. The new septic area is 120' away from wetlands.

R. McDermott opened discussion to members of the Board. In response to C. Leto, J. Shepard acknowledged that there is no other suitable location. Discussion was opened to abutters and members of the public. No comments were heard and the public hearing was closed.

MOTION: To grant relief by way of variance to the Building Code, Section 7.1312 and asks that said terms be waived to permit (installation of) a replacement septic system, in Zone A. (Brown Road, Map 5, Lot 5)

MOTION: M. CARUSO
SECOND: B. RICHARDS
UNANIMOUS

3. **Case 04-13:** Application from **Lawrence Macionski and Kathleen Beauregard** for a Variance to the terms of the Zoning Ordinance, Article III, Section 10.4, and asks that said terms be waived to permit 100% setback (rather than the 125% required), in Zone A. (2 Crestview, Map 7, Lot 13)

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Larry Macionski was present. At the Chairman's request, he provided a summary of the issues relating to his request to erect an amateur radio tower as discussed as part of Case #04-09. The variance requested would allow the applicant to utilize the building to structurally support the tower. Supporting documentation, to include manufacturer specifications, was provided to the Board to support the towers ability to handle winds, etc.

Abutter C. Kuzmier presented additional information to the Board similar to the information provided by the applicant. However, limitations were identified with respect to the location of the bracket and that if a catastrophic event were to take place, the tower would snap at the upper bracket. Lengthy discussion of the design of the tower took place at this time taking into consideration wind and ice storms and the design and specifications of towers at different heights. Concerns were raised with respect to public safety in that pieces of the antenna that is planned to be placed on the top of the tower could become projectile objects. C. Kuzmier requested that the ordinance be upheld allowing for a buffer zone of 125% of the height of the tower.

Additional review and discussion of the information submitted by the applicant as well as by abutter C. Kuzmier took place. L. Macionski indicated that he has presented his facts in writing and has documented numerous legal technical state laws. He also indicated that C. Kuzmier does not reside at the abutting property. R. McDermott indicated that she is the owner of the property and an abutter on record.

R. McDermott asked for any additional comments of the Board. M. Caruso stated that regardless of the location of the tower, the applicant needs to bring evidence of engineering specifications to satisfy the brackets work; safety is a valid issue. R. McDermott stated that the applicant must submit those approved plans to the Building Inspector for his review and approval.

R. McDermott opened discussion to abutters and members of the public. Abutter Malcolm, 17 Kensington Road, stated his concern with aesthetics, safety with respect to possible projectile and impact to the neighborhood. K. Kuzmier stated that there are other ways to obtain a signal such as obtaining software from the internet. He added that the applicant could achieve better coverage if he could scan frequencies rather than relying on the height of the tower to achieve frequencies. T. Parker concurred with the need for a number of brackets given the information provided.

R. McDermott closed the public hearing. B. Richards asked L. Macionski what the size of the antenna is. L. Macionski reported 18 feet with four elements (number of antenna rods) up to 12 to 15 feet. He noted that this size is a limitation to him. In response to B. Richards, L. Macionski reviewed the numbers needed to bring the tower into total compliance with town regulations. He also reviewed his findings with respect to no loss of property values due to the erection of amateur radio towers.

Abutter Steven Smith reported he checked with area real estate agents and it's their opinion that there is a potential for decrease in value due to the perception of the structure itself, the implication of potential impact on health given the emissions.

R. McDermott indicated that the Board will deal with the setback issue and the Building Inspector will address structural concerns when the applicant applies for a building permit. R. Vigneau noted his concerns with the specifications provided in that there already appears to be a deficiency with regard to installation.

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Review of the five criteria for granting a variance took place at this time.

1. No diminution in value of surrounding properties will be suffered. Given the absence of hard facts and the problem of perception being nebulous, 5 Agreed
2. Granting the permit would be of benefit to the public interest. The applicant can erect a tower at a height and location that meets requirements, providing additional safety to the public. 5 Disagreed
3. Denial of the permit would result in unnecessary hardship to the owner seeking it.
Boccia test: a. 5 Agreed
 b. 5 Disagreed
4. Granting the permit would do substantial justice. 5 Disagreed
5. The use would not be contrary to the spirit of the ordinance. 5 Disagreed

MOTION: To deny the applicant's request due to four conditions of granting a variance not being satisfied.

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

4. **Case 04-15:** Application from **Nancy Roka and Tony Delano** for a Variance to the terms of the Building Code, Sections 7.1312 and 7.1314, and asks that terms be waived to permit the construction of a new septic system to accommodate the existing three bedroom home. (68 Exeter Rd., Map 2, Lot 79)

Nancy Roka and Tony Delano were present. Susan Faretra from NH Soil Consultants displayed and presented the plan for a replacement septic system location. She explained that this home is 46 years old with an existing working system. The tank is located under the existing porch and there are dry wells in the front yard area; the specific locations are not known. There are some wetlands in the rear of the lot. The applicants are being proactive by looking for a replacement design to be kept on file with the state (4-year shelf plan) should the system begin to have problems or if the well becomes affected by the existing system. Test pits have been witnessed by M. Cuomo. Test pit results were reviewed at this time. The soil qualities do not meet town requirements.

S. Faretra explained that the system is not in failure now. She has designed a new system that has been reviewed by M. Cuomo. His findings have been provided to the Board and a copy of the letter is part of the file. The applicant is looking for relief to the 20,000 square foot/5,000 square foot areas as well as the water table and depth to ledge requirements. Without relief, S. Faretra indicated she feels the design will result in a 3.5 to 4.5 foot high mound. Relief requested would result in a 1.5 to 2.5 foot high mound. She noted that there is no area on the property that meets requirements. The proposed location will not affect the established gardens and will somewhat hide the mound from the road and abutting properties. Approximately 14,000 square feet of area that meets well setbacks, building setbacks and the 100' buffer to wetlands can be met. R. McDermott inquired about the front of the property relative to the height of the leaching field location.

Discussion was opened to members of the Board. In response to C. Leto, R. Vigneau reported that he does not usually attend the witnessing of test pits, but did attend this time. This system is not to be

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replaced in kind. R. Vigneau added that a shelf plan is prudent and a good thing to do in this case and further noted that the specific location is not known specifically.

Discussion was opened to abutters and members of the public. No comments were heard. R. McDermott closed the public hearing.

MOTION: To approve the applicants' request for relief by variance to the terms of the Building Code, Sections 7.1312 and 7.1314, and asks that terms be waived to permit the construction of a new septic system to accommodate the existing three bedroom home. (68 Exeter Rd., Map 2, Lot 79)

MOTION: B. RICHARDS
SECOND: M. CARUSO
FIVE IN FAVOR, PASSES

5. **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)

T. Parker stepped down as an abutter leaving a quorum of four voting members. R. McDermott introduced Attorney Mark Beliveau as Town counsel. Ernest Cherry, Marshall Decker, Bernard Pelech, Kevin Hamm, Jim Gove, Charlie Kendrick and Christine Cherry were present and the meeting was videotaped by a company hired by the applicants.

A letter of authorization was acknowledged indicating permission for M. Decker to present the application on behalf of the applicants. Attorney Bernard Pelech introduced himself as counsel to address a threshold issue. He stated that an issue has been raised as to whether this request has been before the Board or not. He further indicated that this issue has been raised by town counsel in superior court. B. Pelech stated he feels that the Board has not acted on an application in the past. He understands a letter dated May 13, 2003 was written to the ZBA by the applicants and that the response was that there was no application before the ZBA. Based on this, the ZBA did not exercise jurisdiction.

Attorney Pelech summarized the case of Fisher v. Dover indicating that an applicant cannot file the same application again per court decision. He restated that he doesn't feel the ZBA acted on any application filed by the applicants and reserved the right to argue any substantial change of circumstances. R. McDermott acknowledged that the applicants have not submitted an application to the ZBA in the past regarding the issue of multi-family.

For the record, R. McDermott stated that certain portions (Subdivision Regulations Section 7.9.3 and 7.9.4 – receiving area) of the application seeking relief from Subdivision Regulations which do not fall under the purview of this Board and will not be discussed this evening. M. Decker took this under advisement.

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At this time, the applicant distributed binders of materials to be reviewed at this meeting. R. McDermott expressed concern with presenting such a great amount of information immediately before a hearing and asked why it wasn't presented with the application to allow ample time for review. M. Decker indicated that the information was completed this afternoon. The Board elected to continue with the presentation in spite of this.

M. Decker referred the Board to photographs submitted as part of this binder. The photographs are of a similar development (located in Atkinson, NH, developed by E. Cherry) to the one proposed for Hampton Falls. A copy of the proposed layout of the development was displayed on the presentation board for all to view. M. Decker stated that the lot proposed for this development consists of 82 acres resulting in a density of about one living unit per acre.

M. Decker stated he felt the applicants are entitled to a variance given the Simplex standard and secondly, the applicants feel it is not likely that multi-family developments will be built in Town, specifically not work force housing as the Town's ordinance does not provide an incentive for doing so.

M. Decker proceeded to review the information provided in the binder to include exhibits relating to the applicants' position. He also provided a copy of his presentation as to how this request answers the criteria for granting a variance.

During his presentation, Jim Gove of Gove Environmental Services provided wetland information relating to the development of individual parcels in the Elderly and Multi-Family Housing overlay district. Copies of these maps are provided in the binder. M. Caruso inquired as to whether this type of information was prepared for the Cherry parcel. J. Gove reported that he did and found some areas of larger and some areas of smaller wetlands. J. Gove stated that the exhibit and plan are basically similar and this is a good tool to use for a broad spectrum of planning.

M. Decker provided information relating to the Town of Belmont, New Hampshire, study indicating no negative correlation between the construction of this type of housing and surrounding property values. C. Leto asked who assembled the information provided in Section F (section relating to property values). M. Decker indicated the information was obtained through a website called inhousing.org but that he didn't know who the authors are. Real Estate Agent Charlie Kendrick was also called to explain to the Board the ways in which multi-family developments, specifically, the density, do not decrease surrounding property values. He presented information relating to his experience in Atkinson, New Hampshire. Discussion also took place with respect to those condo units that are low to moderate income versus those that are not. Discussion of the proposal to construct forty eight condominium units of housing for the elderly and sixty condominium units of housing which shall have no age restriction, with 12 units reserved for marketing as low to moderate income, took place.

M. Decker presented support for this proposal's ability to pass the Simplex hardship criteria as outlined in the document provided to the Board. He noted that the applicant has the only application to build workforce housing and that the overlay district is not the most beneficial use to achieve the required number of units for the community. M. Decker also provided a document outlining ten reasons why it is felt that the Cherry property is superior to those parcels in the overlay district to include: reduction of traffic on Route 1, easier access to communities west of Hampton Falls, groundwater pollution, and attractiveness of the site.

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M. Caruso indicated that the Town of Exeter has a provision that does not allow connection to surrounding towns and that the representation made that they will is unfair. C. Leto noted that the proposal will increase the population significantly and that he disagrees this will reduce traffic. Concern was also raised with respect to public safety given that only one access is planned. E. Cherry stated that there is a plan to allow access for future road development to the adjoining property owned by Dean and Beverly Glover which was voted on earlier by the Planning Board on a prior development plan he submitted. Question was raised with respect to tying a private road with a town road. E. Cherry indicated that he has no problem with putting a second entrance on the north side, but that this is a Planning Board issue.

M. Decker concluded his presentation at this time and reserved the right for rebuttal. R. McDermott opened discussion to members of the Board indicating that given the great amount of paper submitted, the Board would need to continue this hearing to allow time to review documents. E. Cherry stated he is not expecting a decision tonight.

Discussion was opened to abutters and members of the public. Katherine Barton of 286 Exeter Road identified that her property is opposite to the entrance of this proposed development. She stated she has concerns with the significant increase in traffic and the safety issues relating to traffic. She also stated that the strain on resources to include the police department and fire department makes this proposal unfeasible. She further stated that the spoken guaranty of no affect on property values concerns her as well as the comparison of Hampton Falls to Atkinson as this is comparing apples to oranges. Abutter Dean Glover indicated he had no comments at this time. Member of the public, Marietta Garavaglia inquired as to the requests for variance to items the Board could not deal with. It was explained that those two items relate to Subdivision Regulations of which the Board does not have jurisdiction and therefore, will only be addressing the other three. Fire Chief Jay Lord requested the name of the development in Atkinson. He was told it is called "Atkinson Woods" located off Lakeside Drive off Route 111. No further comments or questions were heard at this time.

MOTION: To continue this application to the Board's November 18 meeting.

MOTION: C. LETO
SECOND: B. RICHARDS
UNANIMOUS

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

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

H. Adjournment

MOTION: To adjourn the meeting at 10:40 p.m

MOTION: M. CARUSO
SECOND: C. LETO
UNANIMOUS