

**TOWN OF HAMPTON FALLS  
PUBLIC HEARING AND BUSINESS MEETING**

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

**B. Roll Call:** R. McDermott, Chairman; M. Caruso, C. Leto, B. Richards,  
P. Young, Members; J. Henebry, T. Parker, Alternate Members;  
R. Vigneau, Building Inspector; L. Ruest, Secretary

R. McDermott indicated that Alternate Member T. Parker would be a voting member for the Sanborn case and that Alternate Member J. Henebry would be a voting member for the Cherry case.

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

Attorney B. Pelech stated, as a result of the review of the videotape from last month's meeting, the Chairman closed the public hearing and it is not reflected in the minutes. M. Caruso stated he did not recall the Chairman closing the public hearing as one abutter was told that she would have an opportunity to speak at the next meeting. Attorney Pelech stated he would be happy to provide a copy of the tape.

**MOTION:** To accept the minutes of the October 28 meeting with amendment.

**MOTION:** C. LETO  
**SECOND:** M. CARUSO  
**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, and Buyers Mr. and Mrs. Depeters were present. B. Richards stepped down as an abutter.

H. Boyd thanked the Board for continuing this application to allow time to do more homework. He presented a letter dated November 17, 2004 from Attorney Stephen G. Ells. Attorney Ells was not able to attend and submitted facts in support of the requested variance. H. Boyd also distributed copies of the decision of the Boccia v. Town of Portsmouth (5/24/04) case indicating that the Boccia case applies to this request.

H. Boyd reviewed the highlighted sections of the decisions and outlined reasons why this application falls under similar criteria. He stated that the parcel is unique in that it is large, odd-shaped and separated by a wedge of land. When regulations are applied, a small envelope remains to build a home. Although a 3-lot subdivision plan including a road was configured in the past, this would cause undue financial burden to the landowner and is felt to be unfeasible.

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The proposal before the Board is to allow reduced frontage on a large lot, creating a potential of three buildable lots on two parcels of land, with a restriction of one single family home and no further development on the larger lot. Information has been provided to prove the lots viable for the future. H. Boyd stated he felt substantial justice would be done in that the landowner has owned the property for approximately 100 years. He noted that the value of the surrounding property would not be diminished in that only three homes can be built on the 45 acres.

Discussion was opened to questions of the Board. J. Henebry was designated a voting member. C. Leto stated that although he hears the proposal being made, the Boccia case is a difficult one in that there is a question of the boundary. He further indicated that he has concern of setting a precedent and that this proposal will end up with better frontage but does not meet requirements. Discussion of the Boccia decision took place at this time. Attorney M. Beliveau stated the Board should use the principals of law in this case as it is good and valid and that although the case was remanded back, the Board should still consider the decision.

P. Young stated that she didn't see a precedent being set and questioned how many other properties in town have non-contiguous frontage. She stated she felt this proposal makes this situation better. R. McDermott expressed concern with making an odd situation comfortable for an applicant and his heirs.

Discussion was opened to abutters and members of the public. Abutter B. Richards stated he had no objection. G. Kent of Toppan Lane asked for information as to the location of the property and was provided same. A. Tonry, Tonry Lane, stated that as a taxpayer she is not in favor of creating a road. L. Smith, Old Stage Road, requested the Board accept the applicant's decision to restrict development of the larger lot to one home if the Board approves the application. Hearing no further comments, R. McDermott closed the public hearing and entertained a motion.

**MOTION:** To grant 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) with the condition that the property not be subdivided at a later time.

**MOTION:** P. YOUNG

**SECOND:** C. LETO

Review of the five criteria for granting a variance took place at this time. All members agreed on all five points at this time.

**VOTE:** UNANIMOUS

B. Richards resumed his seat on the Board.

2. **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

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units of housing which shall have no age restriction (with other conditions). (289 Exeter Rd., Map 6, Lot 45)

Ernest Cherry, Marshall Decker, Attorney Bernard Pelech and Christine Cherry were present. T. Parker and P. Young stepped down from the Board as abutters. J. Henebry was designated a voting member. Attorney Mark Beliveau was present as counsel for the Town.

R. McDermott informed the members of the public a separate matter wherein an amendment to the zoning ordinance is proposed by the Planning Board. This amendment is to exempt the Multi-Family/Elderly Housing District from the growth control provision. Attorney Beliveau noted that this amendment should have been part of the multi-family/elderly housing ordinance approved in March. It is now being addressed by special town meeting on November 30 and is a separate matter from the application before the Zoning Board of Adjustment this evening.

M. Decker addressed the Board. He restated that he is not an attorney but rather a former real estate broker. He requested the Chairman determine whether or not the public hearing was closed at the last meeting and whether the generous amount of public present tonight will be speaking. R. McDermott stated the public hearing was closed at the last meeting, however, given the great amount of public present this evening; discussion will be re-opened as a courtesy once Mr. Decker concludes his presentation.

M. Decker indicated that he came prepared to answer questions of the Board as a result of last month's presentation and waived his right to speak first. He suggested the Chairman allow the public to speak first. R. McDermott requested M. Decker provide a synopsis of the presentation for the benefit of the public and he did without waiving his objection to re-open discussion.

R. McDermott welcomed comments from the public at this time. E. Berkowitz of Old Stage Road stated that as a 17-year resident he moved here for the rural nature of the Town's two-acre zoning. He added that reasons for two-acre zoning include wetlands and water problems. He urged the Board to remember that it is here to give relief where needed and not to rezone. Zoning amendments are approved by voters/residents of the Town. He also stated that the citizens had their say when they voted to set an area for an overlay district. He expressed his concern with the applicant trying to bully the town with lawsuits, threats of lawsuits and projects (20 lot subdivision, 80 condo project and 108 condo project) that do not conform to regulations. B. Reid of Exeter Road stated her concerns of water availability and arsenic contamination. She questioned how the demand for water will be addressed given the fact there is no Town water. A number of residents inquired as to procedures and why the application was before the Board when the ordinances do not allow this type of use. T. Parker of Exeter Road provided statistics relating to water usage and noted that a significant utility operation would be needed for the 108 housing units. J. Burnham of Victoria Drive inquired as to accommodations for the increased traffic. S. Antippas, Exeter Road, stated concern with the proposed increase in the number of households in Town as well as the plan to develop the adjacent parcel. He asked that a state statute that requires this type of housing to be used exclusively for elderly be identified. He also noted that 108 living units will increase the school population and questioned whether an assessment and facilities for a new school will be addressed before the development is

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constructed. T. Baker of Frying Pan Lane stated that the Town has a district for this use. J. Morris of Victoria Drive asked how many lots the property could be subdivided. L. Smith of Old Stage Road, member of the Planning Board, stated there was a proposal for some number less than 19 that did not meet other Town regulations. G. Kent of Toppan Lane asked how the applicant can put five times the number of units on a parcel that was turned down for 19 units. It was explained that the applicant is before the ZBA to seek relief/variance to the use of his property and that the applicant would still need to apply to the Planning Board for site plan review, if granted. R. Russell of Exeter Road asked what assurance there is that the percentage of units for elderly will remain elderly and not be changed to low/moderate income.

Attorney B. Pelech stated that the unit designations will be stipulated as a condition of approval and that the applicant agrees to do so. M. Decker answered the other questions of the public. He stated that the overlay district is illusory in that the applicant has presented information that the lots in the overlay district can not be built for multi-family use. Exceptions were expressed to this comment and discussion took place with respect to the lots in the overlay district. M. Decker added that it will take years to build out the proposed development and that the impact on population and the school is invalid and not legitimate for the Board to consider.

Former Planning Board Member, T. Tocci of Applewood Drive stated that when the overlay district was formed the option of combining parcels was considered. He added that E. Kingston recently passed an elderly housing ordinance and received five applications for a total of 200 units in a short period of time. He cautioned the Board on the danger of this proposal in that others will come forward once the precedent is set. R. Casian of Exeter Road stated his concern of truck traffic and its impact on the roads over the proposed time span for construction. T. Parker, Exeter Road, read a prepared statement. The document was provided for the file and outlines issues including the applicants' request to set aside no less than 10 pages of the Town ordinances which were voted and approved by the citizens of Hampton Falls, that there is no interference to the applicants' reasonable use of their property given successful and profitable subdivisions along the same road and that there is a need to provide a controlled environment for developing land for the benefit and protection of the citizens of Hampton Falls and not for the maximizing of developer profits.

Hearing no further comments, R. McDermott closed the public hearing and allowed response from M. Decker. M. Decker indicated that one has to be careful of what you wish for as you might just get it or something worse. He referred to a situation in Danville where 23 lots turned into 140 mobile homes with 20 of the homes low income. He added that this proposal is not the worst thing for Hampton Falls to confront and that the ordinances are designed to protect the property interest of the community. He added that he hasn't heard a legitimate reason for turning down the request and that the applicants want to make reasonable use of their land. He stated that the applicants have a Bill of Rights guarantee to permit this use and that it doesn't matter what the rest of the Town feels. He thanked the Board for its consideration.

Attorney M. Beliveau stated that at the first meeting, the Board addressed the applicants' request for relief from subdivision regulations and indicated that those two articles and sections were not within the ZBA's jurisdiction and that no action will be taken on these requests. The application

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was noticed to include these two requests; however, the Board will not act on them. The applicant concurred.

**MOTION:** To deny the applicants' request for variances to the terms of Article III, Section 3.1; Article VI, all Sections; and Article III, Section 8.4 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)

**MOTION:** C. LETO  
**SECOND:** B. RICHARDS  
**UNANIMOUS**

The Board reviewed the criteria for granting a variance at this time providing comments as follows:

1. **No diminution in value of surrounding properties will be suffered.**
  - 108 units will affect the ability to sell and purchase property.
  - The proposal will adversely affect the neighborhood and traffic.
  - The proposal will substantially affect direct abutters with traffic entering and egressing the property.
  - The proposal could affect the availability of water as well as the water table.
  
2. **Granting the permit will not be contrary to the public interest.**
  - The proposal would not be a benefit to the public interest.
  - The proposal would have problems with traffic on Route 88; access/egress from one concentrated location.
  - While schools are not considered a legal stumbling block, the issue at hand is of the NH Seacoast and not the Town of Danville. The Seacoast has housing in the \$400,000 range for families.
  - Families could be affected as well as public services.
  - There is no second means of egress for emergency purposes.
  - One cannot say it is equitable for this application and not for others that come in the future. A number of projects as proposed would change the rural character of the Town.
  
3. **Denial of the permit would result in unnecessary hardship to the owner seeking it. The hardship is not economic, it is a limitation imposed by the land itself; further:**
  - There is no hardship. The application before the Planning Board has shown the property can be subdivided into single-family lots.
  - There are other uses in the zoning ordinance the applicants can use their land for.
  - There are several developments on Route 88. This could/would be a viable development if approached in a different manner.

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- There are other reasonable options for the property that does not require throwing the regulations out.
4. **Granting the permit would do substantial justice.**
- For all the reasons noted above, granting the application would not do substantial justice.
  - The proposal would not be in justice to abutters or the townspeople by changing the zoning ordinances for this parcel.
5. **The use would not be contrary to the spirit of the ordinance.**
- As volunteers, the Board has obligations to meet and implement the spirit of the ordinance as written. The Board is now implementing a judgment as the ordinance is written as obligated to do so.
  - The use would be contrary to the spirit of the ordinance for all the reasons noted above.
  - The proposal would change the rural character of the Town. Regulations are in place to protect that.

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

**F. Other Business:**

Members discussed matters relating to the Board of Adjustment Bylaws and Rules of Procedure; specifically, that of recusing oneself if warranted. R. McDermott shared the information he received from his conversation with Attorney Barton Mayer. The Board agreed to review the Bylaws and Rules of Procedure at it 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 9:13 p.m.

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

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