

TOWN OF HAMPTON FALLS

Call to Order - 7:00 PM: R. McDermott called the meeting to order.

Roll Call: R. McDermott, Chairman; C. Leto, Vice Chairman, P. Robart, J. Henebry, P. Young, Members; A. Dittami, Alternate Member; L. Ruest, Secretary; T. Pare, Building Inspector/Code Enforcement Officer

Review Of The Minutes Of The Previous Meeting (September & December, 2005)

MOTION: To approve the minutes of the September 2005 meeting as written.

MOTION: A. Dittami
SECOND: J. Henebry
3 in Favor, 2 Abstentions, Passes

MOTION: To approve the minutes of the December 2005 meeting as written.

MOTION: A. Dittami
SECOND: J. Henebry
4 in Favor, 1 Abstention, Passes

Organizational Meeting

1. Nomination of Chairman:

MOTION: To nominate and elect R. McDermott as Chairman for 2006-2007.

MOTION: C. Leto
SECOND: A. Dittami
UNANIMOUS

2. Nomination of Vice Chairman:

MOTION: To nominate and elect C. Leto as Vice Chairman 2006-2007.

MOTION: A. Dittami
SECOND: P. Young
UNANIMOUS

A. Dittami agreed to be considered for full Member. J. Henebry and P. Robart agreed to be considered for Alternate Members.

Public Hearings:

1. **Case #06-01:** Application from David E. Chareth for a variance to Article III, Section 3.6.3 to allow a private road, 3 lot subdivision for a lot with less than 250' frontage (186 Drinkwater Road, Map 4, Lot 11)

This public hearing was heard in advance of the reorganization of the Board. Henry Boyd of Millenium Engineering and Brad Chareth were present. H. Boyd presented the plan noting that

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this is an existing lot of record with 156' of frontage totaling 19.5 acres. There is an existing home on the site. A subdivision of three lots is planned whether private road or traditional. The back area of the parcel is basically unable to be developed.

H. Boyd explained that Town ordinances allow for private road subdivision, however, this parcel does not meet the required 250' frontage requirement. The request before the Board is for variance to this requirement. This proposed subdivision has been before the Planning Board twice on a preliminary consultation basis. Each time, certain members of the Planning Board suggested the Chareths consider private road subdivision.

H. Boyd stated he felt that a traditional subdivision road would be more attractive to buyers as services would be provided. In response to the Planning Board members' concern of the Town's responsibility to maintain a 900' road for a three-lot subdivision, this application was submitted. H. Boyd reviewed the five criteria supporting this request as submitted with the application. He added that only half of this parcel is planned for development, that a private road subdivision would not use taxpayer funds to use the road, and that only road frontage is being created at the front of the property, not a building lot. Referring to the Boccia requirements, he stated that the lack of 250' frontage does not allow the owner to consider a private road subdivision. Without this relief, the owner cannot build a "private road" subdivision.

C. Leto inquired as to the letter submitted by Mr. Chareth with the application. The letter indicates the owner can subdivide the property in the traditional manner, provided a waiver is granted by the Planning Board for the subdivision requirement of no points less than 125 feet. If a waiver to the 125' requirement is not granted, two options are: 1) the area at the road entrance could be offered as a variable width right of way for the Town, or 2) the owner could approach the neighbor to see if they would be interested in purchasing the area in question (keeping 50' for road frontage).

In response to the Board, H. Boyd and B. Chareth indicated that the lot was in existence before 1999 (when this section of the ordinance was amended), that the house was built in 1967 and that nine or ten acres was added to the rear of the parcel in the 1970's.

Discussion was opened to abutters and members of the public. Suzanne Veilleux, Drinkwater Road, stated that the road placement would affect the privacy she has enjoyed for 35 years. She stated her concern of being allowed to continue to operate her farm once new residents purchase property and move in. She noted that this type of use is sometimes not acceptable to others. The Board acknowledged her concerns and noted that most issues she raised would be better presented to the Planning Board during subdivision review.

Doug Molin, 172 Drinkwater Road, inquired as to the required width for the proposed road. He was told that the width of the right of way is 50' for both private and public roadways. Private road regulations do not require the road to be built to certain specifications as traditional roadways, however. It was noted that a private road could essentially become a public road by petition and vote of the Town. If approved, the road would then need to be brought to specifications of a traditional road.

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A. Dittami referred to the intent and purpose of the subdivision regulations and asked what affect this subdivision would have on surrounding properties. H. Boyd stated that the back area of the parcel is difficult to develop, the south west corner is Town forest, discussion with the abutter on the north west corner resulted in no interest in development and D. Molin stated he has no interest in developing his property. The rear of the parcel abuts with the Town of Kensington. A. Dittami noted that the applicant could achieve subdivision without the relief requested this evening. Other than monetary, there is no reason why a private road is required. It was noted that the 250' frontage requirement dates back to 1971.

P. Young questioned the reason for sending the application to the Zoning Board of Adjustment when the project would meet subdivision regulations if the Planning Board granted a waiver from the 125' requirement. It was questioned whether the Planning Board understands the duties of the ZBA.

At the Chairman's request, L. Ruest explained that should the applicant decide, he could withdraw this application without prejudice. This would preserve his right to return to the ZBA with the same request. Otherwise, once a decision is made, the same request cannot come back to the ZBA.

The Board members reviewed the five criteria for granting a variance, making comments as noted.

1. No diminution in value of surrounding properties will be suffered.
 - There was no evidence presented one way or the other that the lots would be worth less than a traditional subdivision road; not sure if there would be an affect on abutters.
 - No evidence was presented to suggest diminution.
 - The location of the house lots, set back from the road, would probably be invisible. Two houses are immaterial.
 - Three lots will retain the market value of the area.
 - No evidence was presented to go against diminution.

2. Granting the permit will not be contrary to the public interest.
 - It is believed that the public interest would be better served with a private road (cost, maintenance, upkeep).
 - The Town is interested in small projects, a reason to allow a private road subdivision.
 - This assumes that a public road is an alternative, may be contrary, don't know.
 - No evidence that the request is not contrary within the spirit of the ordinance.
 - In this particular instance, a specific waiver is available to the applicant in the subdivision regulations before the Planning Board. The Planning Board has not denied a waiver. The applicant still has a viable development alternative that doesn't require ZBA variance. When the ZBA grants a waiver, it should be when the landowner needs assistance to develop property in a way best suited. The applicant does not yet need ZBA relief to develop this property. He can go to the Planning Board and exercise the option

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for waiver; still having a subdivision without variance. If the applicant cannot get a waiver from the Planning Board, the ZBA would be inclined to consider otherwise.

3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship:

(B)-Boccia Case - applicants for 'area' variance(s) may establish unnecessary hardship by proof that:

(1) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

(2) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

- No hardship is seen. There are still other viable alternatives to the owner. No use of the property is denied.
- No evidence was presented of hardship.
- Concern was expressed with the applicant being caught between two Boards. Planning Board needs to make a decision for the ZBA to consider. Cannot relieve something not yet there.
- The applicant has other options. No hardship shown.
- Why is the Planning Board sending applicants to the ZBA without a decision? Our hands are tied.

4. Granting the permit would do substantial justice.

- Agreed; would allow the owner to privately develop lots sparing the Town of maintenance costs.
- If all else were in place, it is agreed a private road subdivision is the way to go.
- Didn't see any injustice created by not granting a permit. No injustice to correct.

5. The use would not be contrary to the spirit of the ordinance.

- Everything else being equal, if determinations were made that the land couldn't be developed, granting would be in the spirit of the ordinance. Until such time, no.
- The Board is stuck in a position of no final determination of the Planning Board.
- It is not sure of how the spirit applies to this request. The application speaks to a road, not intensification. This request is not contrary to the spirit of the ordinance in that there is nothing to interrupt landscaping driving down the road.
- Not contrary to the spirit; allows for give and take.

R. McDermott asked if the Board members had anything further to add or change. No additions or changes were made. H. Boyd requested withdrawal of this application without prejudice on behalf of the applicant.

MOTION: To accept the applicant's request to withdraw the application without prejudice.

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**MOTION: C. LETO
SECOND: P. YOUNG
UNANIMOUS**

Suggestion was made to meet with the Planning Board and Board of Selectmen to identify the responsibilities of each Board.

Other Business:

1. Spring Planning Conference

Conference information was provided to Board members. Registration forms should be submitted to L. Ruest as soon as possible for registering and processing payment.

2. Case #04-16 – Paul Montrone, Map 1, Lot 92

P. Robart recluded himself from this discussion. The Board acknowledged a letter from Mr. Montrone dated January 30, 2006 requesting attention to conditions of a variance granted in 2004. He also submitted a subsequent letter dated March 20, 2006 explaining his intentions regarding his earlier letter.

Copies of the application documentation for this case as well as previous meeting minutes and letter of approval were provided to the Board for review. The question before the Board is whether a change can be made to the approval of 2004 without application/legal notice/public hearing.

Following review and discussion of rules and procedures, the Board agreed that the appeal period has long passed and the applicant would need to reapply adding the new criteria to the request.

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

Adjournment:

MOTION: To adjourn the meeting at 8:57 p.m.

**MOTION: C. LETO
SECOND: P. YOUNG
UNANIMOUS**