

PUBLIC HEARING AND BUSINESS MEETING

Call to Order - 7:00 PM: Chairman McDermott called the meeting to order at 7:00 p.m.

Roll Call: R. McDermott, Chairman; C. Leto, Vice Chairman; S. Volpone, Jr., P. Young, A. Dittami, Members; P. Robart, Alternate Member; K. Kelley, Building Inspector/Code Enforcement Officer; L. A. Ruest, Administrative Assistant
Not Present: J. Henebry, Alternate Member

Public Hearings:

Case # 07-05: Application from **Joyce Marelli requesting a Variance to the terms of Article III, Section 8.4.1**, and asks that said terms be waived to permit construction of a residence in Zone A as it is less than 100' feet from the Wetlands boundary on property located at 17 Brown Road (Map 5, Lot 58)

Robert Marelli, Attorney P. Saari and C. Smith of Beals Associates were present. This application was continued to this meeting at the request of the applicant. S. Volpone, Jr. recused himself from this application and left the meeting at this time. P. Robart was designated a voting member.

C. Smith referred the Board to revised plans. He stated that the Marellis are looking to create a private road subdivision comprising of two lots, one for themselves and one for their son. He identified that the plan revision relates to relocation of the proposed driveway. All other proposals remain the same. He noted that the original proposal impacted wetlands and wetland buffers. The septic area falls outside sideline and wetland setbacks. Gove Environmental conducted the wetland delineation as shown on the plan. C. Smith added that the adjacent parcel owner placed a culvert in the 1960s that presumably caused wetlands encroachment on the Marelli property. A site walk of the property was conducted by members of the Conservation Commission. Minutes of the Conservation Commission discussion of this matter were reviewed by the Board.

The revised plans also show the house rotated and moved a few more feet from the wetland. The driveway is to remain gravel. The Marellis are willing to put in a dry well to treat run-off. Luke Hurley of Gove Environmental Services was present to speak to the issue of valuable wetland from a function value standpoint. He reviewed the wetlands delineation and soil survey with the Board and reported that the total functions and values are located at the back of the lot. He noted that by placing a gravel driveway, that the area will have an impervious surface. He stated that the situation would be similar with respect to the house in that the Marellis are willing to place a system to handle the roof run-off. The yard is to be lawn and restrictions could be placed to prohibit use of fertilizer. He stated there is not a lot of open water and spoke to flood flows and sediment. He stated this property is not uncommon and that it is not a protected habitat.

A. Dittami asked whether placing the proposed house in the wetland buffer now splits the flow and asked which direction it would then flow. C. Smith replied that there is a plan to maintain the flow by collecting the roof run-off within a system. A. Dittami asked whether this applies to the septic system as well. C. Smith stated the septic system will have no change to the water flow, however, acknowledged that the placement of a home and septic system will create a change to the water flow to some degree. The change will be to subsurface water with regard to amount and quality.

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In response to A. Dittami's question of how the proposal will change sub-water flow, L. Hurley stated calculations would need to be done to determine the amount of gallons per day for the septic system and added that it would be difficult to say what quantity of the water would flow into the wetland. It is not anticipated that there would be any pollution to the groundwater going to the wetland 100' away. It was noted that the well as proposed falls within jurisdictional wetland soils and needs to be addressed as wells are defined as a structure and structures are prohibited from this area.

With reference to removing outbuildings on the property, A. Dittami asked whether the house, driveway and septic could be positioned so that none fall within the Wetland Conservation District. C. Smith identified the area of upland that remains after setbacks are removed. R. McDermott suggested that the house be placed differently so that it falls within the upland area. It was noted that the driveway cannot be placed outside any wetland buffer on the lot.

Hearing no further questions of the Board, Attorney P. Saari spoke to the five criteria for granting a variance as submitted with the application. He stated he feels the proposal is the least intrusive to wetlands and that there is no alternative that does not require variance. P. Saari indicated that although it is understood the wetland ordinance is in place to protect the wetlands, the applicant had L. Hurley speak to whether the proposal will hurt the wetlands. Also, an attempt has been made to minimize the impact by moving the driveway. P. Saari stated that although question remains as to whether the proposal will harm wetlands, C. Smith and L. Hurley have spoken to their findings of impact but no harm.

A. Dittami referred to the April 12, 2007 minutes of the Conservation Commission. It appears that the overall consensus at that time was that there was excessive wetland exposure. In response to A. Dittami, L. Hurley stated he could not interpret the Conservation Commission's position from the meeting minutes other than that it was concerned with the affect on wetlands. C. Smith reported that after the site walk, Conservation Commission members seemed to be less concerned. Discussion of other alternative locations on the parcel took place to include removal of the existing outbuildings currently on the property. C. Smith noted that this location is also within the 100' buffer, and C. Smith reported that the subject of removing the existing outbuildings to locate the house was discussed with the property owner, but that Mr. Marelli requested the barn remain. Discussion of the accessory dwelling unit ordinance took place with the owner and it was determined that the ordinances limit the size, requires owner occupancy and requires the unit to be attached to the existing dwelling. P. Robart suggested that an area closer to the barn might be farther away from the wetland.

Hearing no further questions of the Board, R. McDermott opened discussion to abutters and members of the public. Hearing none, he closed the public hearing.

A. Dittami asked what other uses the property can be put to given its size. C. Smith stated he didn't feel there was any commercial use and that other than expansion of the existing dwelling, there is not much else without relief from the zoning ordinances. A. Dittami inquired as to the economic hardship for this parcel. C. Smith stated he was unable to speak to property valuation. A. Dittami stated that it was presented earlier that it is felt that the wetland at the rear of the property was created by a culvert over time. He asked what affect this project will have on the quality and/or quantity of water with regard to wildlife in the wetland area. L. Harvey stated he could only speculate that it would have little to none.

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A. Dittami stated he would like to hear more from the Conservation Commission as he is not sure that the representations made by the applicant answer its concerns in order to make an informed decision. C. Leto stated a general concern with regard to the ordinance in that if all property owners proceeded on this basis, there would be significant cumulative impact to the wetlands. P. Robart noted that the proposal places the entire home within the buffer which is more significant than prior applications and added that there are other similar lands in town where structures would be prohibited.

MOTION: To deny the application (**Case # 07-05**) from **Joyce Marelli** for variance to the terms of Article III, Section 8.4.1, to permit construction of a residence less than 100' feet from the Wetlands boundary on property located at 17 Brown Road (Map 5, Lot 58)

MOTION: A. DITTAMI
SECOND: C. LETO

Members spoke to the five criteria as follows:

A. Dittami stated that although there appears to be no diminution in value of surrounding properties, it is believed that granting the permit would be contrary to the public interest based on the concern of the Conservation Commission, evidence the Board cannot ignore. The Board would be throwing out the entire boundary by having the entire house in the buffer. There is a potential for "creep" and it is hard pressed to say the proposal is not contrary to the public interest. A. Dittami stated that he is not sure whether conditions are such that the proposal could not be accomplished another way by repositioning the house or using the accessory dwelling unit ordinance. Two properties not encroaching is easier for the Board to address. A. Dittami added that he is not sure this property is so different from others in Hampton Falls that the Board would be required to take different action. He added that he does not believe granting the request will do substantial justice in that leaving the property intact does more just for the Town and its inhabitants even though he would like to see it utilized for housing for the owner's son. He stated that in light of the objections of the Conservation Commission, it is felt that the use would be contrary to the spirit of the ordinance.

P. Robart agreed with A. Dittami's points as outlined above and had no additional comments.

P. Young stated that the applicant did bring an expert to provide an opinion that the proposal will not alter the essential character of the locality. She stated she felt the representations made will not threaten public safety or welfare and will not detrimentally affect wetlands.

C. Leto agreed with A. Dittami's comments as outlined above stating he feels the proposal is contrary to the spirit of the ordinance.

VOTE: 4 in Favor, 1 Opposed, Passes

The Board took a five minute recess and called member S. Volpone to resume his seat on the Board.

Case # 07-06: Application from **Andrew Himmer** requesting a **Variance to the terms of Article III, Section 6.3**, and asks that said terms be waived to permit utilization of the existing Barn as an accessory residential use in Zone B on property located at 33 Lafayette Road (Map 7, Lot 64)

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Andrew Himmer and Attorney John Ratigan were present. It was explained that the applicant is looking to purchase 33 Lafayette Road to conduct a home entertainment design center. He would also like to reside on the property and is proposing to add an accessory dwelling unit to the upper level of the barn on the property. The barn currently sits within the 100' wetland buffer. The first floor of the barn is to continue to be used for storage and there are no plans to alter the footprint of the barn. Plans are to connect this living unit to the existing septic system and proper silt fencing will be placed during construction.

The applicant is before the Board due to the non-conforming use and the restriction that non-conforming buildings cannot be structurally altered. J. Ratigan reported that the proposal will have no affect on the value of surrounding properties, is within the public good and spirit of the ordinance, and that there is no impact on the wetland buffer as there is no proposal to change the topographics of the land. Protective measures will be put in place for runoff.

Discussion was opened to members of the Board. A review of the plans found the addition of dormers to the roof of the barn. The applicant is to appear before the Planning Board for site plan approval for the proposed change of use. The connections for septic and utilities will be made away from the wetland buffer.

K. Kelley visited the site and reported that he will require erosion control practices be in place as well as require a stockpile area outside the wetland buffer. He noted that the applicant is seeking to construct a 720 square foot apartment where 900 square feet is allowed. The existing septic system is oversized and more than adequate to handle the business and proposed residence.

A. Dittami stated that Section 6.2 of the ordinance is specific with regard to non-conforming uses. He stated he felt this proposal was not a use that was contemplated by zoning and that the use is specifically denied. J. Ratigan stated that the use/building is non-conforming because it is located within the wetland setback and that there is no abandonment. The proposal is to continue the first floor use and put in a residential dwelling unit on the second floor, a use permitted within the zone. A. Dittami indicated that the use/building is now storage.

J. Ratigan explained that the applicant is seeking relief to the issue of non-conformance and that the ZBA regulates the impact to wetlands. The proposal is to alter the inside only and there is no need to determine regulating based on wetland. A. Dittami questioned whether the use of storage will be able to be continued if the Board doesn't allow the proposed use of accessory dwelling unit; whether the use of commercial and residential is allowable.

K. Kelley reported that fire separation will be needed and that the main building on the property would require significant renovation to preserve the type of construction there now to include a fire escape on the exterior of the building.

A. Dittami noted that the ordinances are not to be read as individual sections but as a whole. He acknowledged that there is no proposed change in footprint but that there is a proposed change in use. He added that he is reluctant to overturn the ordinance as there has been no demonstration of hardship to the property without the proposed use; the owner is not be denied the reasonable use of the property and

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the buyer knows of the non-conformity. C. Leto disagreed and stated that there's really nothing changing on the parcel. S. Volpone and P. Young indicated that they do not see the proposal as a threat to the public interest; the proposal doesn't alter the character of the property and there is no additional impact to the wetlands.

Discussion was opened to abutters and members of the public. Hearing no comments or questions, R. McDermott closed the public hearing.

MOTION: To approve the application (**Case # 07-06**) from **Andrew Himmer** for variance to the terms of Article III, Section 6.3, to permit utilization of the existing barn as an accessory dwelling unit in Zone B on property located at 33 Lafayette Road (Map 7, Lot 64)

MOTION: C. LETO
SECOND: P. YOUNG

C. Leto spoke to his motion as follows:

1. No diminution seen or any abutter input that says otherwise.
2. Don't see proposal to be contrary to the public interest.
3. Do believe that special conditions exist that present a hardship. The restriction interferes with the reasonable use given the location. Do not feel it would injure the private rights of others; no indication from abutters.
4. No harm to Town of Hampton Falls.
5. Not contrary to the spirit of the ordinance; nothing to change, technical change only.

A. Dittami asked whether the variance could be restricted to the residential use of the building (barn), i.e., within the building footprint and size as identified on the property tax card dated 3/23/05 on record at the Town Hall. K. Kelley stated that this use is restricted to the barn, with no expansion other than dormers. P. Young added that the proposal before the Board is for first floor storage, second floor 720 square foot living space.

A. Dittami suggested the approval include conditions as follows:

1. That there is no change in the existing footprint of the barn as represented by the property tax records on file with the Town as of 5/24/07.
2. That the applicant be allowed to expand the proposed use up to the full limits of Section 3.1.13, Accessory Dwelling Units, provision of the bylaws.
3. That the applicant, otherwise, abide by all Town regulations.

MOTION: To amend the motion to approve with the above conditions.

MOTION: C. LETO
SECOND: P. YOUNG
UNANIMOUS

VOTE: UNANIMOUS

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Review of the Minutes of the Previous Meeting

MOTION: To approve the minutes of the April 26 meeting as written.

MOTION: C. LETO
SECOND: P. YOUNG
1 ABSTENTION, PASSES

Other Business

1. Request for Rehearing – Case #07-03 – Deborah Norton-Torromeo

B. Torromeo was present. R. McDermott acknowledged receipt of a letter requesting rehearing dated May 14, 2007. The letter included an estimate of construction costs and an indication of a wetland's value assessment to be conducted by West Environmental. No report was provided, however. B. Torromeo offered a copy of the West Environmental letter dated May 22, 2007. Board members indicated that documentation should be reviewed before making a decision. Based on the late receipt and the fact that the Board members have not had a chance to review the report, it was recommended that this matter be taken under advisement and continued to the Board's next meeting. R. McDermott provided the applicant with a Motion for Rehearing Form and requested that he complete it in order to provide all information relative to the rehearing specifying the ground(s) upon which the Board made error(s). R. McDermott noted the agenda close deadline date of June 19 in order that the document can be provided with the mailing packets.

The Board requested that all information be delivered to the Town Hall by June 19 in order that it is distributed to Board members. The Board also requested two additional estimates with regard to construction costs.

MOTION: To continue this matter to the Board's June meeting.

MOTION: A. DITTAMI
SECOND: P. YOUNG
VOTE: UNANIMOUS

Comments or Questions from the Floor

No comments or questions were heard from the public.

Adjournment

MOTION: To adjourn the meeting at 9:20 p.m.

MOTION: C. LETO
SECOND: P. YOUNG
UNANIMOUS