

**Present:** Todd Santora, Chairman; Charlyn Brown, Vice-Chairman; Greg Parish, Lisa Brown-Kucharski, Shawn Hanson, Abigail Tonry, Members; Jim Ziolkowski, Selectmen's Representative; Andy Brubaker, Alternate; Glenn Coppelman, Circuit Rider Planner; Mark Sikorski, Building Inspector; Susan Ayer, Secretary

**Call to order:** 7:00 pm

**Case #16-07-01** – Application from Gaylee Robinson, for Final Public Hearing for Subdivision to create a five (5) acre lot from the existing 44 acre parcel located at 20 Brown Road, Map 5, Lot 3. Expedited review requested.

L. Brown-Kucharski and T. Santora advised the Board of various connections they have with the Robinsons. No issue was found with their sitting on the Board to hear this case.

Henry Boyd of Millennium Engineering, Inc. introduced himself and presented the case for the Robinsons, who were also present.

**MOTION:** To accept jurisdiction of the application as complete.

**MOTION:** C. Brown

**SECOND:** S. Hanson

**6 IN FAVOR, 1 ABSTENTION; PASSED**

### **QUESTIONS OF THE BOARD**

T. Santora asked for clarification about a variance issued by the Zoning Board of Adjustment on March 25, 1999. A Special Exception granted in August of 1998 was rescinded and house and septic system relocated at that time. Relief to Building Code 7.1312 remained valid.

G. Robinson said that there were two lots when they bought the property and obtained the variance in order to try to put the house and septic onto the 2-acre lot. They decided to move the house and well, which increased the square footage of the receiving area.

H. Boyd said that at this time, the Robinsons are seeking to create a home for themselves on a 5 acre lot within the total 44 acre parcel, denoted on the plan as "Lot 1". A lot line adjustment was done in 2010, and the unused 2-acre lot mentioned above was merged into the larger parcel. The existing septic system is approved by the Department of Environmental Services.

Lot 1 will have 642 feet of road frontage on Brown Road.

Test pits have been done by Gove Environmental; results are shown on Sheet 2.

Wetlands had been delineated in the past, and were confirmed.

H. Boyd said that one monument exists, and the other markers are iron rods. He said the plan is in compliance with all requirements except for soils testing, for which a waiver is requested. Another partial waiver is requested from the requirement for a topographical plan. Both waivers are requested due to the fact that the applicant doesn't feel that mapping of the entire 44 acres is necessary when they are only proposing a 5-acre lot. Current use will not be impeded in any way; there is no intended further use or construction proposed for the remaining land.

T. Santora noted that G. Coppelman felt a waiver was needed from Section 6.2.9 as well as those requested (6.2.16 and 6.2.21). H. Boyd said he would be willing to add this to the waiver request.

S. Hanson asked about the prior variance request, and whether it would go with the property. G. Coppelman said that the variance is still valid, and should be noted on the plan. H. Boyd agreed to this revision. In discussion, it was clarified that this variance was for the septic system which is on the remaining area of the parcel.

### **PUBLIC COMMENT**

Beverly Mutrie, an abutter to the property on Brown Road, brought a plan to the attention of the Board, from the original subdivision in 1988 by Thomas Burns. A note on the plan refers to Zoning Board of Adjustment (ZBA) Case 89-03 in which the entire 45 acres were approved for one building lot.

B. Mutrie wanted to know if the number of buildable lots will still be limited, or depend on soil testing.

T. Santora said this does not apply to the case at hand.

Minutes of the ZBA meeting at which the ruling took place were not available to read at the time of this meeting.

G. Coppelman said that he had done some research on this, and thinks that during the original subdivision, only the smaller lot was checked for suitability for a septic system, and that the reason the large piece was deemed unbuildable was because no proof of suitability had been brought.

B. Mutrie said that although it does not affect the current subdivision request, the restriction did exist should be reflected in the minutes.

The Board determined this will be a matter of record for the larger lot.

### **The Chairman closed the Public Hearing**

Spelling mistakes on the plan were pointed out by A. Tonry for correction: Under "Abutters", Martin F. Ward is misspelled twice; under "Plan references", #3, "Subdivision" is misspelled. There was a discussion of how to address the old variance for the septic system, and whether it should be noted on the plan.

Attorney Mark Beliveau was present, and said that the Relief to Building Code allowed a non-conforming feature which would now be in compliance, so the matter is essentially historical. However, if the law became more restrictive again in the future, this area would be grandfathered. He recommended that the relief should be listed on the plan with a brief explanation so that anyone reviewing the parcel can see that it now complies, and to create a complete record.

### **WAIVER REQUEST(S)**

There was a discussion of the need for a waiver request from Subdivision Section 6.2.9, to show details of the entire parcel. It was noted that details would be necessary when and if the remaining parcel is to be built on.

It was decided to add this to the Waiver request letter; H. Boyd then revised the letter and submitted it to the Board.

**MOTION:** To grant waivers as requested in letter of July 26, 2016, from Subdivision Sections 6.2.9, 6.2.16 and 6.2.21.

**MOTION:** C. Brown

**SECOND:** G. Parish  
**UNANIMOUS**

**MOTION:** To approve the subdivision of Map 5, Lot 3 into a total of two lots as shown on the plan by Millennium Engineering dated June 23, 2016, subject to the following conditions:

1. That any and all fees due the Town of Hampton Falls and its consultants be paid before the mylar is signed and recorded.
2. That draft deeds for the newly created lots be submitted for the Planning Board file.
3. That monumentation be bonded, set and certified with a Certificate of Monumentation submitted for the Planning Board file.
4. That no lots are to be advertised or sold before the mylar is signed and recorded. When and if this approved project changes ownership, the new owner is required to appear before the Planning Board to review the approved plan so as to have a complete understanding of it.
5. That the engineer obtains and identifies proper map and lot numbers for the newly created lots from the appropriate official of the Town of Hampton Falls and that a note be added requiring that street numbers for new houses are to be assigned by the appropriate town official of the Town of Hampton Falls (before the mylar is signed).
6. That the plan set submitted as final for recording be reviewed by the Circuit Rider Planner in advance of the Chairman's signature and that no building permits be issued until the mylar is signed.
7. That a CAD file and proper number of plans, to include an 11" x 17" copy, be submitted in compliance with Subdivision Regulation Section 6.1.4.
8. That the relief granted in March, 1999 to Building Code 7.1312 be included as note on the plan with a brief explanation that it is no longer applicable.
9. That the variance for ZBA case #89-3 in 1988 granted to Thomas Burns for 1 (one) buildable lot subdivision be listed on the plan with an explanatory note.

**MOTION:** S. Hanson  
**SECOND:** G. Parish  
**UNANIMOUS**

**Case # 16-07-02** – Application from Avesta Housing for Final Public Hearing for Subdivision creating three (3) Condominium Units for 72 Senior Housing Units in three (3) buildings on Brown Road, Map 5, Lot 57. Waiver requested. Expedited review requested.

**MOTION:** To accept jurisdiction of the application as complete.

**MOTION:** C. Brown  
**SECOND:** L. Brown-Kucharski  
**UNANIMOUS**

The Chairman briefed the Board that the goal in this case is to see that in creating a condominium form of ownership, the spirit of the original agreements with the ZBA and Planning Board is being met.

T. Santora added that while the intent is to process the application as quickly as possible, the Board only received the Condominium document and revised Conservation Restriction

document two days ago, and the Board needs to be comfortable with these documents before approving them.

Sharon Somers of Donahue, Tucker & Ciandella introduced herself and the others representing the applicant: Jonathan Ring of Jones & Beach and Mike Garrepy of Tuck Realty.

S. Somers began by saying that the site plan was approved in March and what the Board is reviewing is just a form of ownership. This needs to be done because the Subdivision Regulations call for a definition of Subdivision to include the Condominium form.

S. Somers said she has worked closely with Planning Board Counsel Mark Beliveau for the language of the Condominium document, and also for revisions to the Conservation document.

J. Ring showed Plan sheet OV1, on which rectangles were drawn around each condominium unit. He said that notes had been removed from OV1 and replaced with notes regarding condominium ownership.

### **WAIVER REQUEST**

J. Ring noted that the one waiver request is to Subdivision section 6.2.3, to change the left plan margin to 1.4 inches which is standard for Jones & Beach to accommodate staples and binding.

**MOTION:** : To grant the request for a waiver to change the required 2” left margin to 1.4” for this plan set.

**MOTION:** C. Brown

**SECOND:** S. Hanson

**UNANIMOUS**

### **QUESTIONS OF THE BOARD**

Board members questioned S. Somers about the decision to use a condominium type ownership. She said that it is basically related to financing, and was always contemplated. She said there was some discussion at the ZBA level of this, and though it may not have been brought up as such during the Planning process, it was always understood that there would be three different components built in phases.

S. Somers said that an important point to know is that in this case, “condominium” does not mean units within the buildings, but three condominium land units, within which there will be apartments buildings. Each land unit will be separately financed.

M. Beliveau said they can be called land units, as the pads the buildings sit on are the condominium units. An example is a commercial business park.

S. Hanson said that one concern is that the restrictions assigned to the Site Plan, including that the apartments are to be for low income elderly people, will apply to all owners. M. Beliveau said that all that is changing is the form of ownership, which is acceptable. He said that at the ZBA phase the applicant supplied a copy of the land use document for another project in Exeter, which showed all restrictions agreed upon there, and that it was said repeatedly that this was a model for what will be done in Hampton Falls. A condition of ZBA approval was that all deed restrictions outlined during the hearing must apply to the parcel.

G. Parish asked if the lawyers for the Town and the Applicant had come to an agreement about amendments to the Condominium and Conservation documents.

Several points of both documents were discussed and Board input was given. S. Somers said that she had conferred with the applicant about including a reference in the Condominium document to the elderly, low-income requirement for the apartment rentals. She said that there

could also be a reference to land use agreements being on record. C. Brown said she would like to see both of those items referenced.

T. Santora asked if there are three owners, who the property manager would be. M. Garrepy answered that Avesta Housing would be the manager of the entire property. Concerns were aired about differing opinions among the owners of how to do things. S. Somers said that in the end, whatever the Board has approved needs to be adhered to.

It was confirmed that individual apartments cannot be sold.

On page 3 of the Declaration of Condominium, item (e) (ii) was questioned, as it reads that “a Unit Owner shall have the right to construct additions to its Building.” S. Somers said that the only reason that language is included is that even if a small bumpout is needed on a building, it would be considered an addition. The building could never go beyond the boundary of the land unit. All remaining land on the parcel will be common area.

C. Brown questioned item (C) at the top of page 4, saying that this means there are no assurances that time spent on architectural design will be carried through. It was agreed to eliminate this entire paragraph.

C. Brown suggested that additional wording be added under item (j) on page 5, to include elderly, low-income restrictions as well as to reference the land use restrictions on the parcel.

S. Somers agreed to add this language and work out the wording with M. Beliveau.

G. Parish asked where the responsibility for expenses that may arise, such as a repair to the pump station, will lie. He was referred to the Grapevine Run Condominium Bylaws, page 7, where this is addressed. There were no further questions on the Condominium documents. Changes to be made were considered minor.

### **DECLARATION OF CONSERVATION RESTRICTION**

The Board reviewed two forms of this document, a prior approved draft and one including an equestrian easement allowing Taylor River Farm to use a portion of the restricted area.

M. Beliveau said that the Board gave approval for this easement, and the additional wording, along with a few other changes worked out between him and the Applicant’s representative now need review and approval.

M. Beliveau further recommended adding a sentence to the new paragraph on page 3, to read: “All activities and any disturbances of the land shall be in compliance with all applicable federal, state and local laws, regulations and ordinances.” M. Beliveau said that the new language will be incorporated into the previously approved document and once recorded, the Town will receive a copy.

There was a brief question and answer period of the Board, in which Board members expressed displeasure at the quantity of documents brought in front of them two days in advance of the meeting. It was noted that normally, an applicant with this much information brought in after the agenda close deadline would have been sent away.

### **PUBLIC COMMENT**

G. Robinson asked if the Town had ever received a copy of the artist’s rendering of the view from Brown Road of the Avesta project. The Secretary will check the file and request one if necessary.

**The Chairman closed the public hearing.**

The Chairman expressed his agreement that the amount of material to review at the last minute was excessive, and said he would not proceed with a motion to approve unless the Board was comfortable with it. There was a discussion and a poll of the members to decide if they needed more time to review.

The opinion of Atty. Beliveau was requested, and he said that while it is most important that the Board Members be comfortable, he himself has looked carefully at all the documents and amended language, and is comfortable with it, and also that nothing is being changed that was previously approved.

All agreed to give permission to the Chairman, Vice Chairman, Conservation Chairman and Planning Board Counsel to make a final review and approval of the Declaration of Condominium and Declaration of Conservation Restriction.

Information will be available to the rest of the Board, as well as to the Conservation Commission for input, though not in the form of a full meeting.

### **NOTICE OF SITE PLAN APPROVAL WITH CONDITIONS**

**MOTION:** To accept the Notice of Site Plan Approval with Conditions document re: "Senior Housing Development 'The Meadows at Grapevine Run' 27 Brown Road, Hampton Falls, NH" provided in the Board packets, as written.

**MOTION:** G. Parish

**SECOND:** S. Hanson

**UNANIMOUS**

**MOTION:** To give the Chairman and Vice Chairman, in conjunction with Planning Board Counsel and Conservation Chairman, permission to review, finalize and approve the following documents on the Board's behalf:

1. Declaration of Condominium of Grapevine Run Condominium
2. Grapevine Run Condominium By-Laws
3. Declaration of Conservation Restriction

**MOTION:** G. Parish

**SECOND:** A. Tonry

**6 IN FAVOR, ONE ABSTENTION, PASSED**

**MOTION:** To approve Application #16-07-02 from Avesta Housing for Subdivision creating three (3) Condominium Units for 72 Senior Housing Units in three (3) buildings on Brown Road, Map 5, Lot 57, according to the plan by Jones and Beach dated July 5, 2016, subject to the following conditions:

1. That any and all fees due the Town of Hampton Falls and its consultants be paid before the mylar is signed and recorded.
2. That draft deeds for the newly created lots be submitted for the Planning Board file and that the Planning Board counsel, prior to the mylar being signed, approve the final language of all the easements and advise the cost of review and recording. All easements are to be recorded in the applicable deeds.
3. That no lots are to be advertised or sold before the mylar is signed and recorded. When and if this approved project changes ownership, the new owner is required to appear

before the Planning Board to review the approved plan so as to have a complete understanding of it.

4. That the plan set submitted as final for recording be reviewed by the Circuit Rider Planner in advance of the Chairman's signature and that no building permits be issued until the mylar is signed.
5. That a CAD file and proper number of plans, to include an 11" by 17" copy, be submitted in compliance with Subdivision Regulation Section 6.1.4.
6. That the note be added to plan page 5A to read "Declaration of Conservation Restriction."
7. That all documents be finalized and approved by the Chairman, Vice Chairman, Chairman of the Conservation Commission, and Planning Board Counsel prior to signing of the mylar.

**MOTION:** C. Brown

**SECOND:** A. Tonry

**UNANIMOUS**

**Case #16-07-03** – Application from Richard Knight for Final Public Hearing for Subdivision creating a five (5) acre lot with existing house, remaining land to be a non-buildable 10.56 acre parcel, for property located at 12 Mill Lane, Map 1, Lot 6.

T. Santora said that he had new information on this matter for the Board to consider, which came to his attention today.

Two sets of meeting minutes, of the ZBA meeting on November 16, 2000 and Planning Board meeting on January 23, 2001, contain details pertaining to the property at Map 1 Lot 6, owned at that time by Gordon Janvrin.

The conditions of approval for relief requested in 2000, from Section 7.1312 of the Building Code (pertaining to a septic system) included "That this lot not be subdivided any further." There was also the condition that the applicant appear before the Planning Board to have a notation marking part of the property "not a building lot" removed.

At the January 23, 2001 Planning Board meeting, this restriction was removed, and a condition added that "a note be placed on the plan reading that "this lot cannot be further subdivided for a building lot."

T. Santora said that the differing language presented a problem. The Planning Board is not supposed to change a ruling by the ZBA, but the recorded plan is more consistent with the Planning Board decision. T. Santora said that it may be best to have the applicant go before the ZBA for clarification.

Henry Boyd, of Millennium Engineering, representing the applicant said that this was new information to him. He also said that the Subdivision plan submitted complies with Zoning, so he did not know what relief would be sought from the ZBA. He said the applicant is not seeking to create a building lot.

C. Brown said that the Town has always required that when subdividing a piece of land, all lots must be buildable, must have test pits done, in order to avoid creation of lots that cannot support residential use.

The Board and Applicant discussed the matter with input from Planning Board Counsel.

The Applicant decided to continue this case to take the time to do further research and go before the ZBA.

**MOTION:** To accept the applicant's verbal request to continue Case #16-07-03 to October 25, 2016 at 7:00 PM.

**MOTION:** S. Hanson

**SECOND:** G. Parish

**UNANIMOUS**

**REVIEW AND APPROVAL OF PRIOR MEETING MINUTES – April 26, 2016; June 28, 2016**

**MOTION:** To approve the minutes of April 26, 2016 as written.

**MOTION:** G. Parish

**SECOND:** L. Brown-Kucharski

**IN FAVOR:** G. Parish, L. Brown-Kucharski, T. Santora, A. Brubaker, J. Ziolkowski.

**ABSTAIN:** A. Tonry, S. Hanson, C. Brown.; **PASSED.**

**MOTION:** To approve the minutes of June 28, 2016, as written.

**MOTION:** S. Hanson

**SECOND:** L. Brown-Kucharski

**IN FAVOR:** S. Hanson, L. Brown-Kucharski, T. Santora, C. Brown, A. Brubaker.

**ABSTAIN:** G. Parish, A. Tonry, J. Ziolkowski; **PASSED.**

**COMMUNICATIONS TO BOARD MEMBERS**

T. Santora brought to the Board's attention an abutter notice sent from the Town of Brentwood Planning Board. There will be a hearing on Thursday, August 4, 2016 regarding the proposed construction of a 150 foot monopole tower for wireless broadband telecommunication on Crawley Falls Road.

**MOTION:** To adjourn the meeting at 10:13 PM

**MOTION:** A. Tonry

**SECOND:** L. Brown-Kucharski

**UNANIMOUS**