

**PUBLIC HEARING AND BUSINESS MEETING
FINAL**

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

Roll Call: R. McDermott, Chairman; A. Dittami, Vice Chairman; J. Deleire, D. French, S. Hanson, Members; P. Young, Alternate Member; L. Ruest, Administrative Assistant; K. Kelley, Building Inspector
Not Present: T. Parker, P. Robart, Alternate Members

PUBLIC HEARINGS

Case # 10-01: Application from Lynda and Raymond Talkington requesting a **Variance** to the terms of Article III, Section 3.8.1, and asks that said terms be waived to permit a small farm stand to be located within the 25 foot setback (specifically 8 feet from the property line). The applicant additionally requests either the above or, an **Equitable Waiver** to the terms of Article III, Section 3.8.1, and asks that said terms be waived to permit a small farm stand to be located within the 25 foot setback (specifically 8 feet from the property line) in Zone A on property located at 307 Exeter Road (Map 6, Lot 40)

Lynda and Raymond Talkington and Attorney John Colliander were present. S. Hanson stepped down from the Board and P. Young was designated a voting member for this application. Attorney Colliander reported that the small 10x14' farm stand (shed) is in place at the front of the property along Route 88 within the 25' setbacks and that Lynda Talkington intends to sell home baked pies from this structure. Attorney Colliander stated that he would be speaking to both the variance criteria as well as equitable waiver criteria and that he is looking to the Board for direction as to which request is to be considered.

Attorney Colliander stated that the area of land next to the shed is forested wetland of which an area is cleared and mowed. K. Kelley indicated that it is not wetland. Because of septic requirements, Attorney Colliander stated he didn't feel the area was buildable. When the Talkingtons located the shed, the lot line was assumed to be where the forested area ended. This has since been found not to be the case and the lot line is closer to where the shed is located (within eight feet of the property line). He reported he feels the forested wetland area is not buildable and therefore, there is no impact to this property owner. The other side of the shed is the area of the Talkingtons' driveway.

With reference to variance criteria, Attorney Colliander stated he failed to see any diminution of property values, the use for which the shed is planned is consistent with agricultural use, there's no public purpose to require the shed to be moved to another location on the property as there is a narrow sleeve of property from the house to the street, and the shed cannot be placed without intruding into the driveway; the shed cannot be placed on the other side of the driveway for the same reasons. He added that the whole idea of hardship has changed significantly with new criteria effective January 1, 2010 and there is no sense to place the shed at the rear of the property.

**PUBLIC HEARING AND BUSINESS MEETING
FINAL**

Discussion was opened to members of the Board. R. McDermott inquired as to whether the shed was stick built or one unit and whether the owners sought input from the Building Inspector. R. Talkington stated that he did speak with the Building Inspector with regard to setback requirements, however, was unaware of the property line. K. Kelley stated he received an ambiguous phone call regarding setbacks, agricultural use and farm stands that brought the matter to this meeting tonight. Additional conversation with regard to need of a building permit took place, however, he had no knowledge of who the caller was and feels the confusion is an honest mistake.

A review of a survey plan prepared for the previous owner and amended to include the shed in its current location took place at this time. Once the property line was identified, the problem with the location of the shed was identified. Attorney Colliander noted that the lot is a non-conforming lot. J. Deleire inquired as to the 25' setback reference as he reads the ordinance to require a 50' setback (two acres or more lots have a 50' setback requirement and lots of one acre and less have a 25' setback). Attorney Colliander stated that if the lot was designated a lot of record prior to two-acre zoning, the lot is governed by the 25' setback. The Board reviewed Article III, Section 3.8.1, at this time. This property is 65,259 square feet or 1.4981 acres, as shown on the survey plan.

Given the indication that a 50' setback applies as well as the position of not making a lot more nonconforming by variance, Attorney Colliander requested to withdraw the request for variance without prejudice.

MOTION: To grant the request to withdraw the application for variance without prejudice.

MOTION: A. DITTAMI

SECOND: J. DELEIRE

UNANIMOUS

Discussion was opened to questions of the Board. P. Young asked whether the applicant should amend the request to 50' rather than 25'. K. Kelley also asked whether the Board feels he made an error in telling the applicant the need to meet a 25' setback. R. McDermott stated that he doesn't feel it was a mistake or malicious intent. Board members concurred. D. French inquired as to whether the planned use meets the criteria of a certain percentage of the goods being produced locally. L. Talkington stated she plans to prepare the pies with fruits grown on the property.

A. Dittami inquired as to whether there is room between the property line and the driveway that would allow the shed if the 25' setback criteria is used. Attorney Colliander stated that placement of the shed in this location would interfere with the driveway and plowing, but that technically, there is space outside the 25' setback. A. Dittami asked how long the property owners have owned the property and was told five years. It was noted that the survey plan is dated June 2009. A. Dittami asked what the approximate cost to move the shed would be. Attorney Colliander stated that any cost would outweigh public benefit and questioned how the Town would gain by having it moved. A. Dittami stated the ZBA is charged with enforcing the

PUBLIC HEARING AND BUSINESS MEETING
FINAL

statutes voted in place and stated that the applicants would not meet requirements without a dollar figure. Attorney Colliander estimated \$100 to \$500. A. Dittami stated he felt upholding the bylaws is worth this cost. A. Dittami also noted that this error in placement was not due to a permit issue and that it appears that good faith effort was made in discussing the matter with the Building Inspector. K. Kelley added that although the plan shows the shed a distance from the driveway when reviewing the photo, the shed would end up approximately two to three feet from the driveway. A. Dittami stated that the survey shows that the shed could be put on the strip alongside the driveway or 25' off the property line facing the road leaving room for snow plowing.

Discussion was opened to abutters and members of the public at this time. A. Tonry, Exeter Road, stated that, in principal, she is not opposed to the shed and that she is in favor of accessory uses such as growing plants, vegetables or selling cord wood. She added that she is opposed to a precedent being set with request for relief being made after the fact when efforts should be made to determine if the shed could meet requirements. A. Tonry also inquired as to where the property owners plan to have customers park vehicles and was told there is plenty of room in the driveway to park two or three cars. With reference to proposed signage, A. Tonry was told that the property owners may have a banner. Hearing no further comments or questions, R. McDermott closed the public hearing.

J. Deleire stated that he would be more comfortable if all abutters were happy, however, looking at the plan, there are three plan references back to 1984 that allowed an opportunity to see where the lot lines were. A. Dittami noted that the plan shows that bounds have been found on a number of corners; with these, it is not difficult to figure out where lot lines are. P. Young questioned what price made moving the shed unreasonable and was told that this is one criteria used when granting an equitable waiver as outlined in the statute. D. French expressed concern with setting a precedent by granting a waiver for a mistake that has been done in good faith and questioned whether a waiver could be granted in such a way as to discourage other situations like this from happening in the future.

MOTION: To deny the request for **Equitable Waiver** to permit a small farm stand to be located within the 25 foot setback at 307 Exeter Road (Map 6, Lot 40)

A. Dittami reviewed the criteria for equitable waiver and noted that

- a. The violation was discovered after substantially completed.
- b. In this instance, if an inquiry had been made and the deed reviewed, the owners could have discovered the location of the property line. Even though the setback of 25' was in error, the owners would have been able to determine where the setback was by walking the property line. It is not up to the Building Inspector to determine where property lines are; it is up to the property owner. From what has been seen and heard this meeting, it doesn't appear this was done.
- c. A. Dittami agreed that property values are not diminished by this shed, however, does think that any time the Board grants an equitable waiver without seriously considering

**PUBLIC HEARING AND BUSINESS MEETING
FINAL**

the bylaws, it has the potential to create a public or private nuisance on this lot or other lots that come before the Board, then there will be one, two or three sheds within property lines.

- d. Ignorance based on failure to inquire is not the case here as the owners made a good faith inquiry with the Building Inspector. No evidence of cost to move the shed; is it \$5, \$500 or \$1,000? In the past when a value question has been before the Board, the Board has asked the applicant to give a value. As to what dollar value constitutes outweighing public benefit, one would have to have a dollar value to start with and the Board does not have one. Knowing that the property line could have been found and that this 10x14' shed could be moved, it is not felt that the applicants have met this particular qualification.

MOTION: A. DITTAMI
SECOND: J. DELEIRE
VOTE: 4 IN FAVOR, 1 OPPOSED, PASSES

A. Dittami offered an alternative motion to address granting an equitable waiver that would allow placement of the shed 25' from the property line. Attorney Colliander requested a point of clarification as placing the shed 25' from the property line leaves the shed in violation of the 50' setback.

MOTION: To grant an equitable waiver to dimensional requirements to place this shed 25' from the property line based on the Building Inspector's interpretation of a 25' lot line requirement; an error based upon a good faith inquiry made by the applicants.

MOTION: A. DITTAMI
SECOND: D. FRENCH

P. Young inquired as to what difference it makes if a setback of 25' or 50' is used as this lot doesn't have 250' frontage and is non-conforming. She stated she is opposed to requiring the applicants to move the shed. J. Deleire stated that had anyone done their due diligence in this regard, anyone couldn't place the shed in this location. He added that in this circumstance, the Board is attempting to address a request without circumventing requirements without setting a precedent for the future.

VOTE: UNANIMOUS

S. Hanson resumed his seat on the Board.

Case # 10-02: Application from Robert and Lori Ruest requesting an **Appeal from an Administrative Decision**. The applicants allege that the Building Inspector has made an error in the decision, determination, or requirement of January 29, 2010 to a zoning inquiry and hereby appeals said decision, which the applicants believe was made in error in Zone A on property located at 25 Coach Lane. (Map 8, Lot 83-14)

**PUBLIC HEARING AND BUSINESS MEETING
FINAL**

L. Ruest stepped down from her duties as Administrative Assistant and A. Tonry at 7:56 p.m. took over as acting secretary for Application 10-2. R. McDermott stepped down as an abutter and A. Dittami took over as acting Chairman. P. Young was designated a voting member.

The Applicant submitted a letter to the ZBA requesting a continuance to the 3/25/10 meeting.

P. Young asked what the policy is regarding accepting continuances and wants the Board to show no preferential treatment to the applicant. A. Dittami stated although he is personal friends with the applicants he feels that the only way to handle this case is to follow the procedures afforded all applicants. A. Dittami stated the applicants have 30 days to appeal the decision of the Building Inspector/Code Enforcement Officer. They made their appeal in a timely manner.

S. Hanson stated that if more data is available then the Board could better understand the issues. D. French stated that although the Belisles were not present they should be allowed to see the information to be presented. J. Deleire made a motion to grant the continuance to the March 25, 2010 meeting, seconded by D. French, passed 4-1.

L. Ruest and R. McDermott resumed their seats at 8:06 p.m.

Review of Minutes of the Previous Meeting:

MOTION: To approve the minutes of the October 22, 2009 meeting as written.

**MOTION: S. HANSON
SECOND: D. FRENCH
UNANIMOUS**

Other Business

R. McDermott reported that this is his last meeting as Chairman and member of the ZBA and suggested that A. Dittami be considered for the position of Chairman at reorganization. He also encouraged all ZBA members to take turns participating in making motions and also to take advantage of the information provided in the Town and City publication provided by the Local Government Center. S. Hanson noted that this publication can be viewed on line at nhlgc.org.

MOTION: That thanks be formally extended to R. McDermott for his excellent service to the Town of Hampton Falls, not only at the Zoning Board of Adjustment, but all other Boards he serves as well.

**MOTION: D. FRENCH
SECOND: S. HANSON
UNANIMOUS**

R. McDermott noted that updated Site Plan Review and Subdivision Regulation pages have been provided to the members for inclusion in their zoning books.

**PUBLIC HEARING AND BUSINESS MEETING
*FINAL***

A. Dittami requested that Board members be extra careful to not show any preferential deference to the Administrative Assistant or the Building Inspector at next month's meeting. R. McDermott requested that all members do their homework and drive by properties before the Board.

Comments or Questions from the Floor

No comments or questions were heard at this time.

Adjournment

MOTION: To adjourn the meeting at 8:20 p.m.

MOTION: P. YOUNG
SECOND: D. FRENCH
UNANIMOUS

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