

**PUBLIC HEARING AND BUSINESS MEETING
FINAL**

- A. Call to Order – 7:00 p.m.:** Chairman Dittami opened the meeting at 7:00 p.m.
- B. Roll Call:** A. Dittami, Chairman; D. French, M. Farinola, P. Young, Members;
L. Ruest, Administrative Assistant
Not Present: J. Deleire, Vice Chairman; T. Parker, P. Robart, Alternate
Members; K. Kelley, Building Inspector

C. Public Hearing

Case #10-5: Application from **Steven W. Bryant** for variance to the terms of Article III, Section 8.4 to permit a fence/wall and appeal to an administrative decision as the applicant alleges that the Building Inspector has made an error in the decision, determination or requirement of April 10, 2010 to remove a structure in relation to Article III, Section 8.4 of the Zoning ordinance and hereby appeals said decision, which is believed to be made in error for property located at 16 Old Stage Road (Map 5, Lot 19-1).

Steven Bryant was present as well as one abutter. No other members of the public were present. A. Dittami explained that he felt that the Building Inspector/Code Enforcement Officer should be present in order to address the applicant's appeal to the administrative decision portion of this application and offered the applicant the option to continue this matter to another time when the Building Inspector can be present. A. Dittami stated that the Board could address the variance portion of the application and continue the appeal to an administrative decision portion.

MOTION: To postpone the hearing on the appeal to the Building Inspector's decision until K. Kelley can be present.

MOTION: A. DITTAMI
SECOND: D. FRENCH

S. Bryant agreed to continue the appeal to an administrative decision portion of his application and decided to continue with his variance request this meeting. M. Farinola stated that the applicant should address the request for an appeal to an administrative decision one way or another in order to obtain an answer and P. Young stated that the applicant may not need a variance if the administrative decision is overturned. S. Bryant stated he is amenable to returning as he feels it is important that decisions are made accurately on behalf of the Town. A. Dittami stated that should the Board grant a variance as requested, that that decision would not be saying the Building Inspector's administrative decision was wrong. S. Bryant stated he feels strongly that the administrative decision is inaccurate and that he is looking to maintain a safe grass play area for children. He added that there is no documentation on file with the Town other than a cryptic email.

VOTE: UNANIMOUS

A. Dittami opened the public hearing for variance at this time. S. Bryant explained that in 2002 he obtained a building permit to build an addition to a garage. At that time, he talked with the building inspector with regard to placing a granite wall which ties into another wall. This plan to develop a safe playing area was due to hunters shooting in the abutting apple orchard toward his home. One building inspector told him to obtain landscaping blocks as the ordinances did not allow the pouring of a wall and that blocks would be pervious. This position was further vetted with the next building inspector. Over time, the walls were built and completed.

S. Bryant explained to the Board that while cleaning up an area of land where apple tree trimmings were dumped, he received a visit from a state agency representative indicating that what he was doing may be wrong. A re-delineation of the soils (2008) was obtained at that time and it was determined that the excavator went into soils designated as poorly drained. The area was restored, resurveyed and re-inspected. Subsequently, Building Inspector K. Kelley came and asked questions where S. Bryant provided information as to his discussions with previous building inspectors.

S. Bryant stated that later he requested assistance of the Building Inspector to identify a location to place a generator. S. Bryant stated that at this visit the Building Inspector starting screaming at him with regard to the walls and other matters. At this time, the state representative was asked to come to the property again; no concerns were found with poorly drained or very poorly drained soils.

S. Bryant reported to the Board that the fence structure is 6" x 6" pressure treated posts and that he interprets the ordinance to allow fences and catwalks within the 100' wetland buffer. D. French inquired as to the granite blocks. S. Bryant stated that the blocks have been placed on the natural surface and that the state representative has checked them three times. S. Bryant added that the area allows for children to place in a safe and level area and also that no one can access the poorly drained soils area as there is no way to go over the area; it is now protected with a double fence.

Questions of the Board included whether this is a structure or a fence by definition, whether it is a permitted structure within the wetland district ordinance and whether the ZBA wants to allow it. Board members reviewed Article III, Section 8.3, Permitted Uses of Wetlands Conservation District, specifically, Section 8.3.7.

A. Dittami referred the Board to an email from the State of August 11 indicating reference to a "retaining wall" not a fence located in the 100' wetland buffer. S. Bryant reported that the state representative came to his property, inspected and found no outstanding issues regarding state requirements. Discussion took place with regard to the new Shoreland Protection Act enacted in 1991 and effective 2008; Hampton Falls amended its ordinances to include these requirements in 2009. In response to A. Dittami, S. Bryant confirmed that a previous building inspector was aware of the second wall and that he was asked about building a fence in the wetland buffer area. S. Bryant stated he referred to Section 8.3 and interpreted the wording to allow this use. P. Young noted that the ordinance does not allow for change to the natural contour. S. Bryant

confirmed that the wall was built to keep the area from eroding and that nothing was added to the poorly drained soils area. D. French asked if the area was graded or scraped from uphill to downhill to level. S. Bryant stated it was and showed an aerial photo showing the posts and pilings on the contour.

Hearing no further questions of the Board, A. Dittami opened discussion to abutters. F. Perry, 13 Old Stage Road, stated he had no objections and that he feels this issue is not obstructing anything in the neighborhood.

P. Young inquired about excavation and it was determined that excavation is described in the Excavation Regulations. S. Bryant stated he did not remove any material. Hearing no further comments, A. Dittami closed the public hearing.

MOTION: To grant a variance to the 100' wetland buffer as shown on the "wetland plan" prepared by NHSC, Inc. of Newmarket, NH for S. Bryant on 8/08 to allow both structures.

MOTION: M. FARINOLA
SECOND: D. FRENCH

P. Young expressed concern with granting a variance for something that doesn't need relief in order to eliminate any further discussion. M. Farinola stated he feels the fences are not structures and that granting this relief acknowledges the existing structures are there.

M. Farinola reviewed the five criteria for granting a variance at this time.

- 1. The variance will not be contrary to the public interest;**
The granting of relief preserves the wetlands.
- 2. The spirit of the ordinance is observed;**
The spirit of the ordinance is to protect the wetlands.
- 3. Substantial justice is done;**
The applicant is not required to remove the wall as it would be undue impact to the property.
- 4. The values of surrounding properties are not diminished; and**
This does not appear to relate to this property.
- 5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.**
It would be an unnecessary hardship to have to remove the structures.

VOTE: UNANIMOUS

A. Dittami inquired as to whether S. Bryant wished to proceed with his appeal to an administrative decision. S. Bryant stated that his concern is that it is not fair for the preference of one individual to be pushed upon residents of the Town of Hampton Falls. He added that he did not like the way this matter was handled and that it was an aggressive, horrific process for him and his wife. S. Bryant added that acts of calling a vendor and telling them not to come to his property brings the question of whether the Building Inspector has the legal right to do so. He

stated that he would like to ensure that decisions of the Building Inspector follow the ordinances and not his preferences. A. Dittami stated that the ZBA can only address matter where a decision has been made. Selectmen's Representative M. Farinola stated that if the applicant feels the Building Inspector's actions were not correct, he would encourage him to submit a complaint to the Board of Selectmen as they might be able to assist with personnel conduct or attitude; with an affirmative decision, it would support the applicant's case. S. Bryant stated he would like to proceed to determine if this matter is consistent with other zoning matters, however, if it is felt that there is no value to other residents, he can address concerns in another form.

A. Dittami noted three issues: whether the Building Inspector's actions were professional or less than professional, whether he is knowledgeable in his field and whether he has made a mistake. He stated that the ZBA addresses the question of whether the administrative decision is correct, however, conduct and competency is not a matter for the ZBA. A. Dittami suggested that S. Bryant's concerns be brought to the Board of Selectmen.

D. Other Business: No other business was discussed at this time.

E. Review of Minutes of the Previous Meeting

MOTION: To approve the minutes of the November meeting as written.

**MOTION: D. FRENCH
SECOND: P. YOUNG
3 IN FAVOR, 1 ABSTENTION, PASSES**

F. Comments or Questions from the Floor: No comments or questions were heard at this time as no members of the public were present.

Referring to Case #10-5, P. Young inquired as to the indication from the State that refers to the fence addressed earlier being a retaining wall. A. Dittami noted that if the rocks were removed from in between the two fences, they would be two fences. P. Young stated she doesn't feel posts are structures.

G. Adjournment

MOTION: To adjourn the meeting at 8:01 p.m.

**MOTION: A. DITTAMI
SECOND: M. FARINOLA
UNANIMOUS**