

**PUBLIC HEARING AND BUSINESS MEETING
DRAFT 3/1/11**

- A. Call to Order – 7:00 p.m.:** Chairman Dittami called the meeting to order at 7:03 p.m.
- B. Roll Call:** A. Dittami, Chairman; M. Farinola, P. Young, Members;
L. Ruest, Administrative Assistant; T. Parker, P. Robart, Alternate
Members; K. Kelley, Building Inspector
Not Present: J. Deleire, Vice Chairman; D. French, Member

Alternate Members T. Parker and P. Robart were designated voting members for this meeting.

B. Public Hearing

1. 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). *Continued from December meeting and withdrawn by Applicant*

A. Dittami reported that Steven Bryant withdrew this request for Appeal to Administrative Decision by way of an email dated January 10, 2011.

2. Case #11-01: Application from **Diamond Star Properties, LLC** for variance to the terms of Article III, Section 8 to permit construction in wetlands conservation district in Zone B for property located at 94 Lafayette Road (Map 8, Lot 41).

Alden Beauchemin of Keyland Enterprises and James Wiczorek, Partner of Diamond Star Properties were present. A. Beauchemin displayed a copy of the plan and provided an aerial photo to Board members. He explained that the property consists of a two-bedroom home that has been vacant for a number of years. The applicant has purchased the property with the intention to convert it to a professional office for his insurance business. A. Beauchemin explained that he and the applicant have met with the Town's Circuit Rider Planner and have also appeared before the Planning Board on a Preliminary Consultation basis. During discussion, it was identified that there is a detention pond on the neighboring parcel which falls within 100' of this property. In order to avoid any problems at the site plan review process with the Planning Board, the applicant decided to seek relief from the Wetlands Conservation District ordinance to permit construction. A. Beauchemin referred the Board to Article III, Section 8, and reviewed the definition where "ponds" is included. He noted that this pond holds water and then dries out.

He continued to explain that the site will be able to support the building, parking, septic and well, however, relief is sought with regard to the Wetlands Conservation District. K. Kelley stated he does not interpret the detention pond as a wetland as it does not support aquatic life, plants or soils (state definition). He asked that the Board consider addressing other relief the applicant might need given that he is currently before the Board. Discussion of the Town's building code requirements, as well as the Building Inspector's ability to waive certain sections, took place. It

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was determined, however, that relief to the Building Code cannot be addressed with this application and that the applicant would need to re-apply and re-notice to include specifics of relief sought.

The Board discussed the question as to whether the detention pond is a wetland. A. Dittami asked A. Beauchemin for his opinion. A. Beauchemin stated he did not agree this detention pond is a wetland; however, Hampton Falls' regulations reference both wetlands and surface water as part of the Wetland Conservation District. Based on the indication of ponds and surface water, the applicant brought the application forward. The Board reviewed the ordinance at this time. Board members indicated that "the matter may qualify under the first sentence of the definition, but does not under the second sentence," "there is a question as to whether the soils are poorly drained by definition," and "personal knowledge of owning a detention pond is that it is dry most of the time, however, detention ponds vary."

Discussion took place with regard to the applicant's understanding of the Circuit Rider Planner's opinion. A. Beauchemin stated the plan was reviewed conceptually and that the Circuit Rider Planner asked the applicant to check into the matter. A. Beauchemin stated he and the applicant are acceptable of the procedure and acknowledge that the detention pond is not a high value wetland. He added that other towns are starting to specifically exempt manmade type storm water detention areas from ordinances and noted that the test pits on the subject parcel did not show any wetland soils within 100' of the detention pond.

A. Dittami stated that it appears that the Board will be unable to grant relief as wetlands don't exist. He offered the applicant the opportunity to continue with the presentation, withdraw the application or request continuance to determine specifics. A. Beauchemin suggested changing the label on the plan from "detention pond" to "detention area." No further questions were heard from the Board.

MOTION: That this application be continued indefinitely due to the fact that the wetlands that are/were identified by advice of the Circuit Rider Planner are not wetlands according to town or state definition of wetland, however, because other matters yet to be determined, which may need ZBA approval, will keep the hearing open and allow the applicant to amend the application to include other matters.

MOTION: A. DITTAMI

No second was heard. A. Dittami withdrew the motion.

MOTION: That the applicant's request for variance be denied because there is no wetland on the property that would require a variance.

MOTION: A. DITTAMI

No second was heard.

M. Farinola suggested that the motion might be to grant continuance on the application based on the fact that, at this time, there is no evidence to support the property being within the Wetland

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Conservation District. He added that he is okay with the applicant withdrawing the application without prejudice. P. Young stated she wants to ensure the Board's position is that this is not a wetland.

Discussion was opened to members of the public. Abutter M. Zaino (sp?), representing the Hampton Falls Baptist Church, asked who has the authority to say the detention pond is a wetland. A. Dittami stated that the Building Inspector is an official who interprets zoning, however, abutters or the Conservation Commission would have the ability to appeal. K. Kelley stated that he is hoping all abutting properties of this detention pond would become protected from having to come to the ZBA with this decision. A. Dittami added that determinations are made on a case by case basis and that in this case the plan submitted identifies a detention pond. He noted, however, that it doesn't appear that the intent of the ordinance was to include manmade storm water features such as detention ponds.

MOTION: That the ZBA deny the variance on the grounds that no variance is needed because the existing detention pond as shown on the plan is not a wetland pursuant to town or state statutes and therefore, the applicant does not need a variance to the Wetlands Conservation District bylaws.

MOTION: A. DITTAMI
SECOND: P. YOUNG
UNANIMOUS

A. Dittami informed the applicant that a written decision is forthcoming which includes a 30-day appeal period.

C. Other Business

Proposed Requirement for Plan Sets in PDF (Portable Document Format) Form: M. Farinola suggested that the ZBA consider setting a requirement that plan sets of multiple pages be submitted to the Town in PDF form. He stated that he felt this would assist with the storage of plans in that paper plans sets would not have to be retained. Following discussion, Board members agreed with a requirement of submitting one full paper plan set and one PDF file.

MOTION: To require an electronic copy in PDF form for full sets of plans.

MOTION: M. FARINOLA
SECOND: P. YOUNG
UNANIMOUS

This requirement will be added to the ZBA application checklist.

ZBA (and Planning Board) Application Process: A. Dittami informed Board members that a meeting of the Selectmen, Planning Board and ZBA Chairs, Town Administrator, Building Inspector and Administrative Assistant took place to determine procedures with regard to the flow of the application process. A. Dittami outlined the manner in which a ZBA application is processed as outlined in a spreadsheet approved earlier today and requested a vote of the Board to approve it as well. Both new procedures will be incorporated into ZBA rules and

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appropriately filed and distributed by the Administrative Assistant. P. Young inquired as to why the ZBA is getting involved with personnel which is a Selectmen's matter. It was noted that the procedures ensure all is addressed and that there is consistency in treating all applicants the same. One change that the Board will notice is that the Building Inspector and Administrative Assistant will provide comment on their findings in reviewing the application information. In the end, the Board will have a complete application.

MOTION: To adopt procedures as presented for processing of ZBA applications.

MOTION: **A. DITTAMI**

SECOND: **T. PARKER**

UNANIMOUS

D. Review of Minutes of the Previous Meeting

MOTION: To approve the minutes of the December 16, 2010, meeting as written.

MOTION: **M. FARINOLA**

SECOND: **A. DITTAMI**

3 IN FAVOR, 2 ABSTENTIONS, PASSES

E. Comments or Questions from the Floor

With regard to Case #11-01, K. Kelley explained that the Planning Board suggested that the applicant determine if relief was needed with regard to the detention pond based on the Circuit Rider Planner's input. Given that K. Kelley disagrees with the Circuit Rider Planner in this regard, he would have interpreted the matter differently and the applicant may not have come to the ZBA seeking relief. In this instance, the applicant submitted an application directly to the Administrative Assistant in accordance with procedure. A. Dittami noted that even if the Building Inspector had determined relief is not necessary, it doesn't preclude an applicant from bringing an application forward to the ZBA. He added that the Circuit Rider Planner is a resource to the Town. M. Farinola emphasized that the Town cannot stop someone who wants to apply to the ZBA.

No other comments or questions were heard.

F. Adjournment

MOTION: To adjourn the meeting at 8:10 p.m.

MOTION: **T. PARKER**

SECOND: **M. FARINOLA**

UNANIMOUS