

PUBLIC HEARING AND BUSINESS MEETING
FINAL

A. Call to Order – 7:00 p.m.

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

The Board welcomed Frank Perry, Old Stage Road, as new member of the ZBA. P. Robart was designated a voting member for this meeting.

Chairman Dittami reminded members and the public that it is not the ZBA's responsibility to make new rules or regulations, but that if it is found that an applicant cannot do something with their property and they feel they should be able to, they can seek help from the ZBA. If it is a matter of being able to use the property in a reasonable manner, there is not much the ZBA can do. If it is a matter that makes it unfair in order to use the property, the ZBA can grant some relief. He stated that the ZBA is to try to help in a way that meets the objectives of the bylaws.

C. Public Hearings

1. **Case # 11-02** (cross reference Case #11-01): Application from **Diamond Star Properties, LLC** requesting Relief from the Building Code Section(s) 7.1.1.1(c) to permit construction of a leach field at less than 48 inches above seasonal high water table, and relief from the Building Code Section 7.1.1.2 to permit a septic reserve area less than 5000 S.F. The applicant also requests a Variance to the terms of Article III, Section 5.4.2 and asks that said terms be waived to permit a drainage structure and well within 10 feet of a property line in Zone B on property located at 94 Lafayette Rd. (Map 8 Lot 41)

Alden Beauchemin of Keyland Enterprises and Diamond Star Properties Partner Jim Wiczorek were present. A. Beauchemin displayed a copy of the plan and reported that the applicant is seeking relief from two sections of the Hampton Falls Building Code as well as variance from one section of the Zoning Ordinance. He referred the Board to the second sheet of the plan set and identified the details of the existing non-conforming property. He noted that the property area totals 15,000+/- square feet measuring 125' by 125' with an existing vacant home. He stated that the applicant is currently seeking both local Planning Board and State approval for a professional office with up to six employees.

A. Beauchemin identified the existing septic, leach field and well locations as well as the proposed locations for future well and septic. He reported that he has finalized approval with the State and provided a copy of the Construction Approval for commercial use from the State of NH. He noted that although local relief is needed from the Town, the septic design was able to meet all State requirements without waivers. A. Beauchemin reviewed the type of system (Advanced EnviroSeptic) and the manner in which it works. He added that the request for variance from the sideline setback is for a drainage trench and future well and does not relate to the septic system.

The Board requested that the three requests be reviewed together. A. Beauchemin provided support for the three requests by reading the application worksheets outlining the reasons for support of relief and/or variance. The worksheets used by the applicant were those for variance. He stated that the gallon usage for the home was

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300 gallons per day where the gallon usage for the office is actually 210 gallons per day. The septic system design is for 300 gallons per day. A. Beauchemin stated that the leach field fits as presented once grades and slopes are taken into consideration as well as well radii. With regard to addressing the drainage, it was noted that no additional water can be allowed onto neighboring property. This request is seeking variance to place a drainage trench within 10' of the property line. The drainage trench is filled with stone and is flush to the ground; it stores water and slowly releases it to the ground water table. The closest point of the trench is seven feet from the property line (four feet for a future well). The future well is 75' from the leach field and road and is, therefore, the best location. A. Beauchemin reviewed his support for relief to the five criteria for granting a variance to the side line set back at this time.

Discussion was opened to questions of the Board. D. French expressed concern with the proposed well being within 25' from the existing well head of the neighbor. He questioned if there is an impact to the neighboring well when drilling the new proposed well. A. Beauchemin stated that there are no ledge issues in this area and stated it is his experience that this is done regularly at the State level. He restated that, in his opinion, the well location is the best place on the lot. Consideration was given to placing the future septic system in this location but that would have placed the leach field within the neighboring well radius. Another consideration was to place the well at the edge of the road; however, there would then be an effect from road salt. It was added that the well is to be grouted and sealed and the area prepared for silt, etc.

J. Deleire asked if it is possible to put in a system that meets the 48" to high water table requirement. A. Beauchemin reported that one could be engineered; however, the mounded system would result in a property value reduction and lack of use of the back yard. A. Beauchemin added that the mounded system would then need relief from fill grades. The system as presented would allow slopes that are safe to mow which was taken into consideration at the time of review by the Rockingham County Conservation District (the Town's agent). P. Robart inquired as to how long the State has approved this type of septic system. A. Beauchemin stated the EnviroSeptic System has been in use for 17 years and that this Advanced EnviroSeptic for three to four years.

A. Beauchemin reported that the existing system is still operational. He noted that the dug well is to be abandoned as this is a condition of State approval and that the septic system is not required to be installed until the existing septic system is deemed in failure. The rationale is that even though there is a change of use to the property (residential home to professional office), the loading is not increased and is actually less.

A. Dittami stated that the Building Inspector has a contrary view and that the change of use requires the septic system to be brought up to date. A. Beauchemin explained that when he first approached the Building Inspector, K. Kelley said that a shelf plan was acceptable. Since then, from emails and consultation at the State, it has been determined that it is important to have an approved plan. A. Beauchemin suggested that a condition of approval contingent upon Building Inspector satisfaction would be appropriate. In response to P. Robart, A. Beauchemin explained that the overall footprint of the leach field is smaller than a conventional system.

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

A. Dittami expressed concern with the well and potential effluent. He acknowledged that the proposal is for a brand new system but that he has limited knowledge of how it functions and also acknowledged approval from the State where approval ensures conditions are in place to protect from contaminations. He stated that he

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would like to have the plan submitted to the Town Engineer in order to ask if there is any adverse affect on wells and whether the existing system needs to be dug up; a technical evaluation of the plan.

F. Perry suggested that the Board consider a conditional approval subject to review of the Town Engineer. P. Robart stated concern with the lack of information provided by M. Cuomo noting that all appears to conform to State standards but that there is no guarantee the abutter's well will not be negatively impacted. A. Beauchemin stated he would be willing to provide additional details and requested a motion to grant approval conditionally upon town engineer review.

MOTION: That the plans and application documents as submitted are provided to Town Engineer Jones and Beach Engineers to give a review of the proposed drainage, well locations and septic systems with the point of having the Town Engineer tell the ZBA that all presented is adequate to protect the abutting property, the ground water on the property and the neighboring property and to ensure that the proposal will meet, if not exceed, all existing town standards in place at the owner's expense.

MOTION: A. DITTAMI
SECOND: D. FRENCH
UNANIMOUS

A. Beauchemin expressed frustration in that it was thought the reason for the meetings with the RCCD and State in this regard was to get a plan to the State that would address all solutions and alternatives to make the existing site better. He stated that this motion will delay the project for another month. A. Dittami stated that the Board is looking for answers to questions with regard to the affect to properties. A. Beauchemin requested continuance to the Board's June meeting.

MOTION: To accept the applicant's request to continue this hearing to the June 23 meeting.

MOTION: A. DITTAMI
SECOND: J. DELEIRE
UNANIMOUS

The Board identified specific questions to be asked of the engineer as follows:

1. Is the proposed system as scientifically (with all know facts about the system) adequate in protecting the soils and environment as a 48" system in Hampton Falls? Does it meet the same level of protection as Hampton Falls' standards?
2. Is there a danger to the existing neighbor's well from the digging of a new well within this close proximity with regard to diminution of the neighbor's quality of water?
3. Are measures of protection from storm water infiltration in place? This is asked with concern of the affect on the neighbor's well given the location of the infiltration trench as proposed.
4. Are there any adverse environmental impacts as a result of the design as proposed and will the ultimate discharge from the septic and groundwater accomplish the same result as the existing Hampton Falls' standards and regulations?
5. If designs proposed are not adequate to protect the owner's and abutter's interests, are there any suggestions that could help the applicant?

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6. Clarify the issue of whether or not a new septic system has to be installed or whether the owner can use the existing system until failure or until there is a State approved septic system. With a State approved system, does it have to be installed or can it be maintained as a shelf plan?

Planning Board Chair C. Brown stated that no matter what the outcome, the Planning Board cannot help the applicant until the ZBA has reached resolution on a working well and septic system on the property. The Board agreed to ask Building Inspector K. Kelley to answer the question as to whether the system is required to be built.

2. **Case #11-03** (cross reference Case #10-04): Application from **T. Park Realty Trust** requesting a Variance to the terms of Article III Section (s) 3.8.1.1 to allow a sealed surface area on the lot greater than 15%, also section 5.4.2 to allow parking spaces closer than 10 feet to the property line, and Section 8.4.1 to allow the parking lot to be closer than the required 100 foot setback from poorly drained soils in Zone B on property located at 1 Lafayette Road. (Map. 7 Lot 70)

Attorney John Colliander, Engineer and Soil Scientist William Evans and owner David Benoit were present. J. Colliander requested to withdraw two of the three requests of this application those being the relief to the side line set back requirement and the sealed surface area requirement. This leaves one variance sought to the 100' buffer to wetlands to allow a parking lot.

J. Colliander distributed a copy of an overlay plan that shows the property in its entirety. He identified an area of poorly drained soils which was described as a "finger." The 100' buffer line from this area was also identified. W. Evans explained that this finger of poorly drained soils was created by drainage from foundations. Today that drainage is gone and routed around the parking lot to a level spreader where drainage water is treated and spread out into the area. W. Evans stated he felt the area should not be considered wetland based on the Army Corps of Engineers manual as he could re-map the area and go through the process to not declare it a wetland; however, he doesn't want to. He emphasized that the hydrology in this area is no longer considered poorly drained soil.

A. Dittami asked, and J. Colliander confirmed, that the soils in the area of the finger are defined as wetlands in Hampton Falls' regulations. W. Evans described the area behind the 100' buffer line as natural soil. He noted that the 25% of the parcel is developed, or two acres disturbed. The remainder of the parcel is not to be disturbed. He identified an area of prime wetlands and stated that all site drainage stays on the property and flows down grade on a gradual basis to tidal marsh.

W. Evans stated that the parking configuration is different from that approved by the Planning Board. He stated that the proposal is made so as not to disturb the vegetated buffer and that no removal of trees is planned. A review of where the parking spaces are located now versus the proposal to add parking spaces took place. W. Evans identified the drainage for the lot and referred the Board to page two of the plan set. Conditionally approved parking spaces total 101 with six handicap accessible spots. The proposal is for 207 spaces plus 10 handicap spaces less the ten spaces from the side line setback. The occupancy of the building is approved at 275.

F. Perry expressed concern with the applicant asking the ZBA to not consider the finger of wetland. W. Evans noted that he has drawn a separation around it so as to not go into the area. J. Colliander restated that the poorly

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drained soils do exist and fall under Hampton Falls' regulations. He stated that the proposal is to avoid this area and only intrude into the entire 100' buffer. W. Evans explained the three parameters by which a wetland is identified. A. Dittami asked if the applicant can show that this proposal will have no affect on the purpose and intent of the bylaw or that the applicant cannot reasonably use the property.

J. Colliander reviewed support to grant relief to the five criteria for granting a variance as presented in the application. He noted that the proposal will help alleviate congested parking at present and that only one third of the property is being used without intruding into high valued wetlands. He stated that the lot is uniquely configured and that it is an injustice to require the applicant to stay outside the buffer area on an underutilized lot. The intrusion into the buffer is far removed from other abutting uses (the abutter to the south is the applicant himself). The special configuration of the property, being a long lot, and trying to work within one third of the area is a hardship. The applicant cannot maintain business without moving the parking to the back and needs relief to do so in order to intrude into the 100' buffer.

J. Deleire asked why the need for more parking was not presented to the Planning Board. J. Colliander stated that the construction of the septic system affected the conditionally approved parking area eliminating 25 spaces. J. Deleire stated it appears from the plans that the applicant can gain 25 or more spaces without intruding into the buffer. J. Colliander stated that the reality is that more than 101 spaces are needed based on activity since the business opened.

J. Deleire asked if there is a hardship as it appears the business is doing well. J. Colliander stated that the hardship relates to the special conditions distinguished from other properties in the area. P. Robart stated that the property was purchased for this use. J. Colliander stated that he feels the property is uniquely configured and not that the applicant didn't know what it was when purchased. He added that this request does not adverse impact the wetlands as the finger of wetland is of no value. F. Perry stated it appears that the hardship is the inability to expand the business and that hardship does not relate to a business plan. J. Colliander stated that the applicant still has a function hall limited to 275 people; however, the change is the number of spaces needed to accommodate parking. D. French stated that it appears the hardship is that customers can't find a place to park.

A. Dittami asked the applicant to provide information showing that the proposal will not affect the area as there is no value or no natural productivity. He stated there are specific purposes within the bylaws which are in place to protect these types of areas. He asked the applicant to speak to why these requirements have no bearing on this property. J. Colliander stated that W. Evans is a licensed engineer who has provided a professional opinion. A. Dittami noted that W. Evans stated that he could change the designation because of the Army Corps of Engineers manual but he did not say what happens downstream; are there other fingers, etc. that could be affected by cumulative result. A. Dittami asked whether a technical explanation that says this proposal is not connected to anything else can be provided. W. Evans stated that once parking is installed in this location, there would be no adverse result as, in his opinion, this is not a jurisdictional wetland and that there is little or no value from a wetland point of view.

A. Dittami referred the applicant engineer to Article III, Section 8.1 Purpose of the Wetlands Conservation District and asked if these criteria have been considered and whether studies have been done. W. Evans stated that no definitive studies have been done, only field walks and delineation. He added that one can see certain upland species as well as the leading edge where wetlands start to develop. W. Evans restated that the wet area resulted from concentration of foundation drains, that the area is manmade and that the applicant is willing to

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leave the “finger” area on the plan and work around it. W. Evans reviewed the drainage in place with the Board. Question was raised as to what happens to gas and oil that leaks from vehicles. He stated that these would be treated by the vegetation and level spreader as well as storm water. He added that the area is preserved due to local, state and federal regulations; the area is not practical to develop. P. Robart asked why, if the wetland is manmade, the applicant doesn’t correct the plans and pave the area. W. Evans stated that he prefers to leave the delineation and work around it. He acknowledged that town standards determine the finger as a wetland and that he prefers that the existing flagging remain thus using a variance to work with what’s available on site.

Hearing no further questions of the Board, discussion was opened to abutters and members of the public. Conservation Commission Chair Karen Ayers stated that the Conservation Commission reviewed the plans and commented on the plans only; no site walk was held. She stated that the Conservation Commission cannot make a judgment or opinion on inaccurate plans and that wetlands should be re-mapped if they are not correct. J. Colliander stated that the plans are correct and wetlands correctly mapped. K. Ayers added that the Conservation Commission has discussed having graduated buffers depending on values of wetlands but that they are not in existence today.

K. Ayers added that the Conservation Commission identified that the plans had adequate parking without going into the buffer and did not understand why additional parking would need to be placed within the buffer when other areas on the parcel would accommodate parking without a variance. She added that should the ZBA grant this request, the Conservation Commission has asked that it remain pervious using pervious pavement as it doesn’t compact the way gravel or stone compacts.

A. Dittami asked how the property would be affected if the parking spaces are not added. J. Colliander stated that the applicant is before the Board because of parking issues. He added that the applicant can operate with the parking as approved but that it doesn’t look good. He cited that the Police Chief, Seabrook Planning Board and recent Hampton Union news articles have been addressing parking. There is also a temporary Certificate of Occupancy about to expire. C. Brown reported that the project has received conditional approval of the Planning Board and that it was expected that the applicant would come back in the spring to finalize parking. She added that the installation of the septic system and the inability to pave and create marked spaces affected the parking when the business opened. P. Robart noted that if the lot were paved, an additional 40 spaces could be placed without intruding into the buffer. He also inquired as to the use of pervious pavement. W. Evans stated that the drainage on site is set up to slow water down and treat it within a swale to a level spreader. C. Brown stated that the Planning Board will expect that the area be able to be striped with parking space markings, not gravel. Also, drainage calculations have yet to be reviewed with the potential change in parking.

J. Deleire stated that the Board is limited by the five criteria for granting a variance. He stated that he doesn’t feel there is a hardship as 40 spaces more than needed can be provided for without variance. He added that the business is viable, operating and is not restricted with regard to use. J. Colliander offered a compromise amending the application to intrude 50’ into the wetland buffer. A. Dittami stated he is still concerned with the cumulative effect and suggested obtaining independent verification that there is no adverse impact to wetlands and prime wetlands. He asked how many other parcels along Route 1 have fingers of wetland or ruler shaped parcels. K. Ayers stated there are some.

Hearing no further comments from the public, A. Dittami closed the public hearing and called for a motion.

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MOTION: To approve the plans as submitted with the exception of the elimination of 41 eastern most parking spaces.

**MOTION: D. FRENCH
SECOND: J. DELEIRE**

Further discussion took place where it was noted that the applicant can prepare a plan that does not involve variance and gives the appropriate number of parking spaces for the use and also that a condition could be placed to require a second opinion by an engineer and Conservation Commission for technical review with attention given to the purpose and intent of the bylaws and whether the plan is consistent with the purpose(s). K. Ayers requested that Mark West of West Environmental Services be utilized to confirm whether the area is a low value wetland. She added that this cannot be determined by looking at a set of paper plans and that someone would need to walk the site to evaluate why a wetland is not a true wetland using the three criteria W. Evans mentioned earlier this meeting. J. Deleire stated he would not be adverse to a second look to determine if there is an adverse impact, however, asked other Board members if they felt the five criteria have been met. A poll of the Board found no convincing evidence of hardship as there was not enough evidence that the intent of the bylaw was not affected and that the applicant cannot otherwise use the property.

VOTE: 2 IN FAVOR, 3 OPPOSED, MOTION DOES NOT PASS

MOTION: That the variance as originally requested by the applicant be allowed with the following conditions:

1. That the project is reviewed by the Conservation Commission in conjunction with a soil scientist of its choice.
2. That once that review has been done, that it is forwarded to the Planning Board and that the Planning Board, in conjunction with site plan review, will accept or reject based upon their belief as to how it impacts the overall project.

MOTION: A. DITTAMI

No second was heard; motion failed. No other motions were heard. The variance for Case 11-03 was denied.

D. Organizational Meeting

1. Nomination of Chairman:

MOTION: To nominate and elect Alex Dittami as Chairman.

MOTION: P. ROBART

There was no second to this motion as A. Dittami explained that he is unable to continue as Chairman due to work commitments. He respectfully declined continuing as Chairman as he feels it would become a disservice to the Town.

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MOTION: To nominate and elect John Deleire as Chairman.

**MOTION: D. FRENCH
SECOND: A. DITTAMI
UNANIMOUS**

2. Vice Chairman:

MOTION: To nominate and elect David French as Vice Chairman.

**MOTION: F. PERRY
SECOND: J. DELEIRE
4 IN FAVOR, 1 OPPOSED, PASSES**

3. Alternate Members:

A. Dittami reported that Alternate Member T. Parker has expressed concern with meeting his commitment of Alternate Member and that if someone else comes forward he would step down.

E. Other Business

1. Reconsideration of Requirement for Plan Sets in PDF (Portable Document Format): L. Ruest explained the concerns with the requirement of plans in this format. She explained that state statutes require electronic files to be converted to paper after ten years and stored for additional years. She also noted that it is sometimes difficult to view information on a monitor and that paper plans are the means used at times of review and research.

MOTION: To abandon the requirement of PDF plan sets at this time.

**MOTION: D. FRENCH
SECOND: J. DELEIRE
UNANIMOUS**

2. Amended ZBA Application Checklist: Copies of the revised ZBA application checklist was provided to members. The changes were highlighted for the members use.

3. OEP ZBA Handbook (Oct. 2010): L. Ruest explained that this Handbook is a good source for reference on various ZBA matters. She offered a paper copy for members to review and return or an electronic copy for members use on their computer. Members asked that the electronic copy be forwarded to them. L. Ruest noted that this document is updated periodically.

F. Review of Minutes of the Previous Meeting (February and April): There were not enough members present to approve minutes. This matter will be added to the next agenda.

G. Comments or Questions from the Floor

**ZONING BOARD OF ADJUSTMENT
MAY 26, 2011**

**7:00 PM
TOWN HALL**

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No comments or questions were heard from the floor at this time.

H. Adjournment

MOTION: To adjourn the meeting at 10:53 p.m.

MOTION: J. DELEIRE

SECOND: P. ROBART

UNANIMOUS