

**Present:** John Deleire, Chairman; Frank Perry, Vice Chairman; Steve Bryant, David French, Members; Mark Call, Alternate; Susan Ayer, Secretary; Mark Sikorski, Building Inspector  
**Absent:** Larry Job, Member; Peter Robart and Patricia Young, Alternates

The Chairman opened the public hearing at 7:00 PM.

Mark Call was appointed a voting member for this evening, in the absence of Larry Job.

**Case #16-02:** Application from Micah Denner, Septic Designs of NH, LLC, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a septic install less than 50' from lot line in Zone A, for property located at 223 Exeter Road, Map 6 Lot 61.

Applicant Micah Denner presented the case on behalf of property owner Mary Ann Hill, who was not present. He said this is an old historic farm house with a failed septic, and the variance is required because there is no way to situate the septic system more than 25 feet from the property lines (Town requirement is 50 feet; State requirement is 10 feet.)

M. Denner gave information about the type and location of the proposed septic system.

#### **QUESTIONS OF THE BOARD**

F. Perry questioned M. Denner on what other options there are, such as putting the system in a different area of the property, or using a different type of system that would take up less space. M. Denner said that the only other area available would need to be cleared of 20-30 old growth trees. He also said that he had looked into high tech leaching systems, but said that these are usually used in waterfront properties with very limited space, as they are more expensive and also require more maintenance.

F. Perry said he would have liked to see other options spelled out in order to know this is the only solution. He said he felt this was chosen for financial reasons, which are not to be considered for a variance.

M. Denner said he had looked at Enviro and chamber systems, and no matter what type of system he used, it would be impossible to stay within the Town lot line setbacks of 50 feet.

D. French asked if the system could be rotated to bring it further away from the lot lines. M. Denner said that he has to keep it separate from the water table, and turning it would cause issues with fill, and the septic system to stick up from the ground. He said he has contoured it to tuck into the slope as much as possible, and that he has worked with the design to the point that he is confident this is the best location he can find.

Asked for his opinion, the Building Inspector said that he is always hesitant to disturb or remove old growth trees. He also said that the new system will be going into the same spot as the old system, which will be removed, except that the new system will be slightly farther from the lot line setbacks.

D. French asked if this is a two-family residence, and was told that it is, but that even without the extra burden on the system, it would have failed sooner or later. The new system is sufficient to the current demand.

S. Bryant said the neighbors might object more to the trees being removed than to the variance to setbacks.

F. Perry said that his own leach field is no more than 40 feet long, and wondered why 75 feet was necessary for this system. M. Denner said that aside from abiding by Town regulations, he needs to take soil types and perc rates into consideration. In this case, if the field was too small, it would not have time to drain out.

The Board asked M. Denner to address the five criteria for granting a variance. He read from the application with some elaboration:

1. The variance will not be contrary to public interest, as no structures are being built and the lawn will be replaced so that there is no visual eyesore.
2. The spirit of the Ordinance is being observed in that, due to the lot characteristics, a gravity system cannot be designed that would be within the 50 foot setbacks.
3. Substantial justice is done, in that the system is designed to have the least financial hardship on the property owner as well as providing the best location for the site.
4. The values of surrounding properties will not be diminished, as there will be no visual or unsightly impact to the abutters or surrounding area. Keeping the old growth trees is considered helpful to this criterion as well.
5. Special conditions cited include that the house was built in 1835, and is downslope to the property with limited usable area on the lot. The current septic has failed.

F. Perry said he feels that enough due diligence was not done to make a decision. J. Deleire said that saying the system is designed to have the least financial impact has not been shown. He said the Board is being asked to make a difficult decision because there are alternatives but these have not been made clear.

M. Denner said that no other option will get the system back 50 feet, and nothing can reduce the leach field by 50% without spending \$20,000 to \$30,000 on a clean solution system.

M. Sikorski asked the Board to consider Article III, Section 7.7.2, which reads:

“In those cases involving a contiguous addition to an existing structure which may be set back a lesser distance from any lot line than specified in 7.7.1, such addition shall have setback distances which are at no point less than the least setback distances of the existing structure from any lot line, except that, the foregoing notwithstanding, the minimum setback from any lot line in A District shall not be less than twenty-five (25’) feet.”

After more discussion, M. Denner brought a larger size plan to the front table and pointed out the details of the proposed location.

F. Perry said that he had been misreading the drawing, and that having had the 25’ vs. 50’ lines on the plan clarified for him, his opinion had changed.

## **PUBLIC COMMENT**

No abutters were present, but Richard Knight of Mill Road said he would not object to the plan if he were a neighbor, that it seemed the best solution and would not affect neighboring properties. The Chairman closed the Public Hearing.

**MOTION:** With regard to **Case #16-02:** To approve the request from Micah Denner, Septic Designs of NH, LLC, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a septic install less than 50’ from lot line in Zone A, for property located at 223 Exeter Road, Map 6 Lot 61.

**MOTION:** S. Bryant

**SECOND:** D. French

The five requirements for granting a variance were reviewed, comments supporting that this variance will not be contrary to public interest, will observe the spirit of the Ordinance, substantial justice will be done, it will not diminish the value of surrounding properties, and that due to special conditions of the property, literal enforcement of the provision will result in unnecessary hardship; no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one.

**VOTE: UNANIMOUS**

**Case #16-03:** Application from Stephen and Maryann Zagieboylo, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a wheelchair accessible garage in Zone A, for property located at 23 King Street, Map 4, Lot 27.

The Chairman opened the Public Hearing.

Stephen and Maryann Zagieboylo were both present, and Maryann Zagieboylo presented their case for a variance, saying that she and her husband were happy to find a home in Hampton Falls that was wheelchair accessible. However, the ramp is external and icy in the winter; they would like to have access from a garage.

Because the house is on a two acre lot, the Zagieboylos learned that they need to meet a 50 foot setback, whereas if the property was under an acre in size, the setback would be 25 feet. They had not realized when they purchased the home that they would need a variance to build a garage.

Two proposals were submitted, one that has a smaller garage, but the end is closer to the road. This would bring a ramp into the kitchen and would be 25 feet from the road.

The second proposal is 42 feet from the right of way, but comes off a hallway, which is not as desirable. A two-car garage is necessary to have room for the wheelchair ramps.

Asked which plan she preferred, M. Zagieboylo said Proposal #1 would be better for her. She also said that they had explored other options, but could not build off the side of the house, and the back of the house posed problems as it is two stories high.

The Board agreed that Proposal #1 made the most sense for the current owners as well as future owners.

M. Sikorski referred the Board to his written opinion that the addition attached at any other point to the house would not make sense. He said that if attached to the living room, natural light to that room would be blocked.

No abutters were present and no public comment was heard.

M. Zagieboylo then read from her application to address the five criteria for granting a variance:

1. The plan will not be contrary to public interest. It does not interfere with any drainage or infrastructure, wells, septic, sewage, or gas lines. Esthetics will be improved as there will be no cars parked in the driveway.
2. The spirit of the Ordinance is observed by making the designs for the garage encroach as little as possible on the setback. Also, as the lot is less than two acres in size, it falls into a gray area between one acre and two acre lots; if it were less than one acre in size, the required setback would be 25 feet, and either of the two proposals would comply.
3. Substantial justice is done as it is difficult and unsafe for a person in a wheelchair to get in and out of a vehicle in snow, ice and other bad weather. This would bring a disabled resident a little closer to the mobility that most people enjoy.
4. Granting the variance would enhance the values of surrounding properties. It will be more attractive than the current state, where cars are always parked in the driveway. This is the only house in the neighborhood without a garage – without one, it tends to bring down the local property values.
5. There is nowhere on the property to make a wheelchair-accessible garage that adheres to the provision. Behind the house is at basement level, so would not provide access to the house for a wheelchair-bound person. The space beside the house does not have sufficient room, and would encroach on the side-yard setbacks.

The Chairman closed the Public Hearing.

**MOTION:** In the case of **Case #16-03:** Move to grant the request from Stephen and Maryann Zagieboylo, for variance to the terms of Article III, Section 7.7.1 (Yard Requirements), to permit a wheelchair accessible garage in Zone A, for property located at 23 King Street, Map 4, Lot 27, utilizing Applicants' Proposal #1, noting that the closest point of the new construction to the Town's right of way for the street would be 25 feet, as this proposal is preferable from the point of view of a handicapped person.

**MOTION:** F. Perry

**SECOND:** J. Deleire

Reviewing the five requirements for granting a variance, the Board found that the applicants had addressed all five criteria satisfactorily.

**VOTE: UNANIMOUS**

**Case #16-04:** Application from Richard Knight for relief from the terms of Building Code Section 7.1.1.1, to permit the creation of a non-buildable lot in Zone A, for property located at 12 Mill Lane, Map 1, Lot 6.

Attorney John Colliander presented the case for R. Knight, noting that he was involved in the Planning Board cases for this property in 2000 and 2001. Henry Boyd of Millennium Engineering was present as well.

Attorney Colliander said that this is a fairly simple application, that R. Knight owns the entire fifteen acres, and plans to sell the house with five acres, but would like to retain ten acres for recreational use. He said that the applicant is here tonight because the property can't be subdivided without a variance, as the Town Subdivision regulations mandate that a subdivision must result in a buildable lot.

J. Colliander said that the applicant does not want to build on the lot, does not want a building permit, and in any case, a septic system could not be put on the lot. He said that in effect, this application is to waive the Building Code so that hypothetically a building permit could be obtained, though the applicant does not want a permit and could not get one. He said that nothing will change on the land except for the form of ownership. J. Colliander said he would suggest granting the variance on the condition that no structures will be built and no trees will be removed. This would not be a conservation easement, but would act effectively as one. The point was made that if the entire property were to be sold with the house, the new owner could cut and sell the timber on the acreage.

F. Perry asked that details of the history of the lot be outlined.

In discussion with J. Colliander and the Building Inspector, the timeline of activity on the property was determined:

1. The original lot of 22 acres was subdivided in 1985, creating a "C" shape out of the original rectangle, and a house built at 10 Mill Lane in 1986.
2. In 1988, the "C" was subdivided, and a second area identified as buildable. At this time, the notation was added to the plan that Lot 2, the remaining 15 acres, was "not a buildable lot for this plan, but may be submitted at a future time."
3. In 2000, mapping and topography was done for the entire 15 remaining acres. A variance was obtained to allow a septic system in the portion that became 12 Mill Lane. The variance was granted with the condition that "this lot not be subdivided any further."
4. In 2001 the Planning Board lifted its earlier restriction from 1988 with the condition that a note be added reading that "this lot cannot be further subdivided for a building lot."

At this time, the problem identified by the applicant and the Planning Board is that the restriction set by the ZBA in 2000 cannot be lifted by the Planning Board, and also that in 2001 they had added the condition that the lot cannot be further subdivided for a building lot.

The differences in the language of the two restriction notes were discussed.

Charlyn Brown, Vice Chairman of the Planning Board was present and said that the wording of the ZBA in 2000, that the lot not be subdivided any further, cannot be changed by the Planning Board, only by action of the ZBA.

F. Perry asked what impetus this Board has to go back to change the intent of a previous board, when he assumes the restriction was known to the buyer.

J. Colliander said that this would not be changing the intent, which was not to build on the remaining 10 acres.

M. Sikorski commented that it seems the Boards are going around the same circle again, taking notes off the plan, dividing, putting notes back on, etc. He said he wants it to be clear that this lot is not buildable.

J. Colliander said of course the applicant and Millenium Engineering would be happy if the lot were buildable, but it clearly is not.

J. Deleire read from the November 2000 decision. He said that he sees it is a very challenging lot, and that it was clear that there was to be no more subdivision, and now this Board is being asked to reverse that.

J. Colliander said that what was talked about then was oriented to not being able to build, and his point now is that the applicant does not want to build, but keep the property effectively in a conservation state, and the only way to do that is to get this variance in order to subdivide.

F. Perry said there is the option of giving the land to the Town as Conservation land, waive the septic reserve area and create a substandard lot.

D. French asked if the problem with the Planning Board is that the lot can't be subdivided if it is not buildable. J. Colliander said that the Town of Hampton Falls does not have a designation of "non- buildable lot." In order to create a new lot, it needs to be eligible for a building permit.

F. Perry wondered what would prevent the same question from coming up again. J. Colliander said that there will be the condition that the lot will not be built on, and also, aside from subdivision approval, the lot does not conform with the Building Code requirements for a septic system.

D. French suggested another way for the applicant to have the desired use of his property, by putting a covenant on the deed of sale. He said that if properly worded, this could solve the problem by giving R. Knight the use of the property during his lifetime.

It was noted that this could affect marketability, but also that either way, the land ends up with someone besides the buyer using the acreage. J. Deleire said this would mean the Board would not have to circumvent the decision of a prior board, or go against the Building Code. J.

Colliander said that the ZBA has the jurisdiction to change a prior decision if necessary.

H. Boyd commented that the Building Code was much more stringent in the past with regard to soil to bedrock distance requirements for a septic reserve area. He spoke about the topographical relief on the lot, saying there were upland areas, but that no one spot was large enough to meet the setbacks for septic.

F. Perry said the applicant is asking for an exception from the Building Code as a mechanism to get a Subdivision approval. He asked H. Boyd if there was no place on the lot to put a septic reserve area, or even a septic system, and was told that with the low quality land and wet land, there was no place to even build a shed.

J. Deleire noted that the applicant has not asked for relief from the ZBA plan note from 2000, and asked if this was not necessary in order to overrule that decision.

J. Colliander answered that this did not need to be in the petition, as being granted the Building Code exception would solve the problem.

J. Deleire asked M. Sikorski and C. Brown what the Planning Board position would be if the language added by the ZBA in 2000 (“that this lot not be subdivided any further”) were not on the plan.

C. Brown said that the ZBA ruling was a red flag the Planning Board could not overlook. However, even if it were not there, in order to subdivide a property, the applicant has to come in with a plan that shows areas for well and septic. The Planning Board could not accept a non-conforming lot. J. Colliander agreed with C. Brown, saying the Planning Board has no jurisdiction to approve the plan.

F. Perry said it sounds like this lot will not be subdivided. J. Deleire said that the ZBA would have to circumvent the Building Code, which he doesn’t feel is the business of the ZBA, and also that he feels the Board is being asked to do so without any information at all.

J. Colliander said that he could easily come back at a later time with a proposed non-conforming septic plan, if that would help.

H. Boyd said he feels this is a very unfortunate situation. J. Deleire said he does not disagree, but that sometimes the Board is not in a position to grant the relief requested.

The discussion returned to the option of gifting the 10 acres to the Town as Conservation land. J. Colliander said he would be happy to explore this, though it would still require subdivision approval.

C. Brown said that the Planning Board would take it under consideration. Both actions would take place at once; the land would be subdivided with the intention that it would be gifted to the Town as Conservation land. Asked if the Planning Board would entertain this solution, C. Brown said she can’t answer for the Board, and the restriction from 2000 would still need to be removed.

J. Colliander suggested the matter be tabled so that he and the applicant can look at Conservation options. He said he had not thought about this option until now and needs time to be prepared to address it.

**MOTION:** To table Case #16-04, for relief from the terms of Building Code Section 7.1.1.1, to permit the creation of a non-buildable lot in Zone A, for property located at 12 Mill Lane, Map 1, Lot 6, consistent with current plan.

**MOTION:** J. Deleire

**SECOND:** D. French

**UNANIMOUS**

**REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: May 26, 2016**

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

**MOTION:** J. Deleire

**SECOND:** F. Perry

**UNANIMOUS**

**OTHER BUSINESS:** The Chairman reviewed the 2017 meeting dates and application deadlines as prepared by the Secretary. These dates were approved as presented.

**MOTION:** To adjourn at 9:10 PM.

**MOTION:** J. Deleire

**SECOND:** D. French

**UNANIMOUS**