

**PUBLIC HEARING AND BUSINESS MEETING  
FINAL**

**A. CALL TO ORDER:** C. Brown called the meeting to order at 7:00 p.m.

**B. ROLL CALL:** C. Brown, Chairman; L. Smith, Vice Chairman; A. Franciosa, B. Mutrie, Members; M. Kasprzak, Selectmen's Representative; R. Spoerry, Alternate Member; L. Ruest, Administrative Assistant; D. Smith, Circuit Rider Planner; K. Kelley, Building Inspector  
**Not Present:** R. Janvrin, A. Tonry, Members

R. Spoerry was designated a voting member for this meeting.

**C. PUBLIC HEARING**

**ZONING AND BUILDING CODE AMENDMENTS**

The addition and amendments of these sections will promote public health, safety and welfare, preserve the rural character of the Town, encourage the appropriate and wise use of land and otherwise contribute to the Town's ability, through its zoning ordinance, to more fully meet the aims and purposes of zoning as set forth in New Hampshire RSA 672:1.

1. Amend sections 2, 3, 5 and 7 of the Hampton Falls Building Code by eliminating and amending redundancies and conflict with the State of NH and International Building Code (IBC) standards;

C. Brown opened the public hearing and reviewed the proposed amendments highlighted on draft handouts provided to members of the Board and the public. She noted that the proposed removal of certain sections is due to archaic requirements and certain redundancies that do not follow state and international building codes.

Discussion was opened to Board members and members of the public. Hearing no comments or questions, she closed the public hearing.

**MOTION:** To approve the amendment to the Building Code as read and forward it to the Board of Selectmen for inclusion on the March 2011 warrant.

**MOTION: L. SMITH**  
**SECOND: R. SPOERRY**  
**UNANIMOUS**

2. Amend Section 12- Home Occupation ordinance, by adding language that permits outdoor recreational uses such as tennis and swimming lessons to sections 12.1, 12.2, 12.4.1.1, and 12.4.1.11

C. Brown opened the public hearing and reviewed the proposed amendments highlighted on draft handouts provided to members of the Board and the public.

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Discussion was opened to Board members and members of the public. Hearing no comments or questions, she closed the public hearing.

**MOTION:** To approve the amendment to Section 12, Home Occupation, as read and forward it to the Board of Selectmen for inclusion on the March 2011 warrant.

**MOTION:** L. SMITH  
**SECOND:** R. SPOERRY  
**UNANIMOUS**

**1. Case # 10-10-01:** Application from **115 Lafayette Road Real Estate Trust** C/O Maria Elias for Site Plan Final Public Hearing to allow a proposed building with approximately 1,824 SF of a retail space to be used as a Seafood Market Place with a 24 seat restaurant and take out service on property located at 115 Lafayette Road (Map 8, Lot 60-1) *Continued from November meeting.*

Wayne Morrill of Jones and Beach Engineers referred the Board to a revised plan set as well as engineer review comments from Altus Engineering (12/9/10) and his letter of response (12/10/10). He reviewed each comment requiring discussion and noted the location on the plan set where the concern has been addressed as outlined in his response letter.

B. Mutrie stated she would like to see more information with regard to the proposed plantings to include overall height of growth.

W. Morrill also responded to new comments (#88 through #93) identified by Altus Engineering and responded with explanations as outlined in his response letter. He provided a revised copy of the drainage analysis (Rev. 4: December 1, 2010), a copy of Approval for Construction from NH Department of Environmental Services with regard to the septic system as well as a copy of an updated NH Department of Transportation driveway permit (#06-199-216) which is noted on the plan.

W. Morrill reported he also considered T. Franciosa's suggestion to move the well and was able to locate it behind the gravel parking lot which allowed for the well radius to only cross onto the next parcel by 10 feet. He noted that stop bars have been added to the gravel portion of the parking lot and that a dumpster and propane tank location has been shown with plantings to screen the area. Discussion took place with regard to adding large deciduous trees to provide shading. W. Morrill explained that there is little area to plant trees of this type that would not affect something else.

No further comments were heard from the Board. C. Brown opened discussion to abutters and members of the public. No abutters were present other than Administrative Assistant L. Ruest. Hearing no discussion, C. Brown closed the public hearing.

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**MOTION:** To approve the request from **115 Lafayette Road Real Estate Trust** for amended Site Plan approval to allow a proposed building with approximately 1,824 SF of a retail space and 1,000 SF of office space to be used as a seafood market place with a 24 seat restaurant and take out service on property located at 115 Lafayette Road (Map 8, Lot 60-1) subject to the following conditions:

1. That any and all fees due the Town of Hampton Falls and its consultants be paid before the mylar is signed and recorded.
2. That the building height and sightless objects (pipes, stacks, air conditioners, etc) not exceed 35 feet.
3. That the landscaping be installed according to plan. No occupancy permit shall be issued until the landscaping is inspected by the Building Inspector.
4. That the applicant post financial security before the mylar is signed. Applicant is to submit a cost estimate to be verified by the town engineer.
5. That no building permit be issued until security is posted and an agreement is signed. When and if this approved project changes ownership, the new owner is required to appear before the Planning Board to review the approved plan so as to have a complete understanding of it. Also that no changes to the approved plan(s) can be made without appearing before the Planning Board.
6. That any and all state permits be obtained and made part of the file before the mylar is signed.
7. That the Planning Board approves any change to the State Department of Transportation driveway permit.
8. That a note reading "No additional use or change of use shall be permitted unless approved by the Planning Board." be added to the final plan.
9. That approval is for a retail seafood market with 24 seat restaurant and 1,000 square foot office space on the second floor and shall be noted as such on the final plan.
10. That junipers planted at the entrance/exit be of dwarf variety that grows no higher than two feet to provide clear view in both directions.

**MOTION: L. SMITH  
SECOND: T. FRANCIOSA  
UNANIMOUS**

**2. Case #10-12-01:** Application from **Allen and Lee Anne McCarthy** for Final Public Hearing for Lot Line Adjustment to transfer .37 acres from Map 5, Lot 3, Richard and Gaylee

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Robinson to Map 5, Lot 5, Allen and Lee Anne McCarthy at property located at 38 Brown Road. Expedited review is requested.

Lee Anne McCarthy and Richard Robinson were present. No abutters or members of the public were present. B. Mutrie stepped down as she is an abutter to Richard Robinson. L. McCarthy explained that she and her husband are looking to purchase an area of R. Robinson's property that she and her husband have been using over time.

The Board reviewed the plan prepared by Millenium Engineering presented with the application and L. McCarthy answered the Circuit Rider Planner's review comments at this time.

- 1. Are there any structures on the Robinson property (depicted as lot 5/3) that would now be in the setbacks because of this lot line adjustment?**

There are no structures on the Robinson parcel that would now be in the setbacks.

- 2. Was an equitable waiver of dimensional requirement ever sought, or granted for lot 5/5. If so, it should be noted on the plan. Regardless, the lot line adjustment will make the depicted lot (5/5) less non-conforming to side yard setbacks.**

C. Brown explained that there are buildings (sheds) located in the sideline area where they are prohibited by zoning. She stated that she has learned that the original parcel for this home was much smaller (requiring less than 50' setback) and at some time in the past an additional four acres was added making the lot more conforming (requiring a 50' setback). It was noted that the house is 30 feet from the side line.

- 3. The area calculations for lot 5/5 are incorrect and should be changed to 5.614 acres and 244,475 S.F by my calculations.**

The area calculations need to be corrected by the engineer. It appears area was subtracted rather than added.

- 4. Much of the subdivision plan requirements are not on the plan and are listed as N/A on the Subdivision Plan Checklist. Given the fact that this is a minor lot line adjustment and "based on the merits of the plan" I do not feel as though it is necessary to contain all requirements listed on the Subdivision Plan Checklist (e.g. HISS data, and topographic contours).**

D. Smith stated he didn't feel certain requirements need to be met as this is a minor lot line change.

- 5. A signed letter(s) of authorization from property owners involved in the Lot Line Adjustment should be obtained prior to approval.**

Due to both property owners being present, it was determined that letters of authorization were not required.

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Additional discussion took place with regard to the two sheds within the sideline setback. It was determined that these sheds are on skids and are not permanently fastened to the ground. C. Brown informed the applicant that should the temporary nature of the sheds change to permanent that the structures would need to be moved 50 feet from the property line. D. Robinson stated that he was not opposed to the sheds in the present location. Hearing no further discussion of the Board nor comments or questions from the public, C. Brown closed the public hearing.

**MOTION:** To accept jurisdiction of the plan as complete.

**MOTION:** L. SMITH  
**SECOND:** T. FRANCIOSA  
**UNANIMOUS**

**MOTION:** To approve the applicant's request for lot line adjustment to Map 5, Lot 5, adding .37 acres to Map 5, Lot 5 and decreasing Map 5, Lot 3 to 41.73 acres in accordance with the plan by Millenium Engineering, dated 10/29/10, subject to the following **conditions:**

1. That new monumentation be set and a Certificate of Monumentation be provided for the file before the mylar is signed and recorded.
2. That new deeds be provided for the file showing the appropriate acreage added to lots.
3. That any and all fees due the Town of Hampton Falls and its consultants be paid before the mylar is signed.

**MOTION:** L. SMITH  
**SECOND:** R. SPOERRY  
**UNANIMOUS**

B. Mutrie resumed her seat on the Board.

**D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES**

**MOTION:** To approve the minutes of the November meeting with one grammatical change.

**MOTION:** L. SMITH  
**SECOND:** B. MUTRIE  
**UNANIMOUS**

**E. OTHER BUSINESS**

**1. Committee Reports**

C. Brown acknowledged Capital Improvement Committee minutes of 11/9/10.

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She also acknowledged Road Committee minutes of 12/2/10. She noted that additional engineering review funds have been posted for the Peltons Way private and public accounts. This project also needs to address renewing its Letter of Credit as it expires December 27. C. Brown asked L. Smith to follow-up with Town Administrator E. Small and Administrative Assistant L. Ruest in this regard to ensure the Town is protected.

She also informed the Board that L. Ruest researched the matter of subdivision regulation amendments approved in 2007. She found that although these amendments were approved at public hearing and certified, the change did not get made to the regulations. L. Ruest will work with the Rockingham Planning Commission to correct this and provide revised (pink) pages to Board members.

**2. Hardy Lane – Release from Construction Phase (see Road Committee minutes of 12/2/10)**

The Road Committee, at its December 2 meeting, has recommended the Planning Board release Hardy Lane from the construction phase. John Krebs was present on behalf of the developer of this road.

Discussion took place with regard to the Road Committee's discussion of changing the practice of not releasing the road at this point in the process. C. Brown stated that this subdivision falls under current rules. She asked if the Town has an as-built plan and deeds for the road. J. Krebs reported that he submitted an as-built plan to the Road Committee and that his lawyer has forwarded deed language to Planning Board counsel for review and approval. C. Brown noted that the Town cannot act until it has the deed to the road, however, the Planning Board can recommend release.

**MOTION:** To accept the recommendation of the Road Committee to release Hardy Lane subdivision road from the construction phase.

**MOTION: L. SMITH**  
**SECOND: T. FRANCIOSA**  
**UNANIMOUS**

**MOTION:** That the Planning Board recommend to the Board of Selectmen that the Town accept Hardy Lane subdivision upon receipt of the deed and as-built plans.

**MOTION: L. SMITH**  
**SECOND: T. FRANCIOSA**  
**UNANIMOUS**

With reference to the proposed changes being considered by the Road Committee, J. Krebs recommended that consideration be given to requiring a certain build out of the road as he feels it is more effective to evaluate per mile as this will ensure that taxes received from homes built offset maintenance. In other words, it is suggested that the Town not accept a road until the

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value of the road meets a threshold. This provides some measure for the Town to insure it is not maintaining a road without homes on it.

**3. Proposed Amendment - Article IV, Signs and Special Regulations**

Board members reviewed proposed changes to the zoning ordinance with regard to signs in the commercial district. D. Smith reported that these changes are being proposed in order to have the zoning ordinance wording synonymous with the existing site plan review regulations. He noted that signs in existence would be grandfathered from these changes.

Board members expressed discontent with moving or flashing electronic signs of any kind and also expressed preference for down-shielded stationary lighting. K. Kelley inquired as to electronic signs such as those at the gas station that advertise the price (red LED numbers). D. Smith stated that Hampton Falls is a rural area and that these amendments help retain that character.

Lengthy discussion took place with regard to what the Town would prefer with regard to signs in the commercial district. Examples of the Route 1 strip in Massachusetts versus the Freeport, Maine area were cited. K. Kelley stated he felt this could be an enforcement problem, however, agreed that flashing signs can be a distraction and hazard.

Discussion concluded with the suggestion to add this matter to the Ordinance and Regulations Review Committee listing of matters to be addressed for consideration in 2011 with the potential of having it be part of the 2012 warrant.

**4. T. P. Realty Site Plan Performance Agreement Modification**

C. Brown referred the Board to the performance agreement for the function hall at 1 Lafayette Road and indicated the need for amendment to item number three.

T. Franciosa first referred the Board to item number nine indicating that he felt the developer should not be stopped from doing work at a site. C. Brown noted that this agreement refers to site work of a project. T. Franciosa added that he feels the Planning Board needs to be the discretionary body that tells a developer that a bond is insufficient and added that he feels a cease and desist can be counterproductive in this regard. Following discussion, the Board agreed to amend the last sentence of item number nine to read ***“Should the Planning Board require such additional security, the Developer shall comply within 15 business days, after which, at the discretion of the Planning Board, shall cease construction of all site improvements until the above increase in the Security is posted.”***

T. Franciosa also referred the Board to item number eleven, last sentence. Following discussion, the Board approved amending the last sentence to read ***“Should the Developer fail to make the needed repairs or corrections by thirty (30) calendar days after the above notice is issued, the Planning Board will automatically reserves the right to draw on the Security and make the necessary repairs.”***

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With regard to item number three, C. Brown stated that the proposed revision is to acknowledge that all paving for this project is not done (the paving plants have closed for the winter).

*(M. Kasprzak excused herself from the meeting at this time.)*

Following discussion, the Board agreed to delete the second sentence and amend the third sentence to read ***“The Planning Board may agree to a partial release and allow the issuance of a temporary six-month Certificate of Occupancy if seeding, other minor landscaping, paving of the rear parking lot and items number 1, 7, 9 and 10 (installation of stone check dams, installation of storm drainage and catch basin, installation of site lighting, installation of suction line and testing of tank for fire cistern) of Jones and Beach Engineers site inspection letter of November 24, 2010, cannot be done due to weather conditions.”***

C. Brown explained to the Board that a mylar for the function hall project has been re-done to agree with the plans conditionally approved by the Planning Board. She noted that these plans no longer work with regard to the rear parking configuration because of the specifications needed for the septic system which resulted in the ground being raised higher than anticipated. C. Brown reported that the applicant plans to apply to the Planning Board for an amendment to the site plan in the spring.

The issue at this time is the need to address Americans with Disabilities Act (ADA) handicap parking space requirements. The conditionally approved plan shows six handicap parking spaces at the front right of the building. In order to get accessibility to both levels of the building, handicap parking spaces need to be provided at the rear left of the building. K. Kelley reported that the applicant can avoid having to put in an elevator if these spaces can be provided at the nearest point of entrance to the lower level. The problem in the area referred to is a change to the topography and the resulting sloping created by the septic system berm and fill extension. He requested the Board be reasonable and allow him to require an area to be leveled for three handicap parking spaces. L. Smith stated that if temporary handicap parking is needed in the rear that the applicant should have his engineer put it on a plan for consideration of the Board.

Board members expressed discontent with the changes in the site from those presented and conditionally approved. D. Smith stated that the site is different from that which the Board approved and L. Smith stated he does not have engineering expertise to determine if this proposal is acceptable. He recommended the applicant bring the matter back before the Board as both D. Smith and Jones and Beach Engineers have indicated this is a problem.

Discussion continued with regard to the back parking configuration and whether the property owner will be able to meet the number or required spaces. Concern was expressed with patrons parking on abutting parcels such as the hotel or former Joseph's restaurant. D. Smith stated the applicant needs to come back with an amended site plan as soon as possible. T. Franciosa stated that insufficient parking is a safety issue and questioned whether the numbers of spaces on the approved plan are available now that the septic system is constructed. C. Brown stated that the travel lane along the septic system is no longer available, losing approximately 25 spaces. K.

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Kelley stated that safety requirements inside the building have been met and suggested limiting occupancy of the building to two per parking space.

Board members reviewed the plan at this time in conjunction with K. Kelley's proposed location for three handicap parking spaces at the rear left of the building. Discussion included reducing the occupancy capacity to relate to available parking, placing conditions on the Certificate of Occupancy and restricting the number of parking spaces/patrons.

D. Smith stated that he doesn't recommend signing the mylar unless conditions are placed on the Certificate of Occupancy and emphasized that modifications made on site need to come back to the Planning Board. He also expressed frustration with what has been done compared to conditional approval and suggested the Board obtain a legal opinion. C. Brown agreed that the as-built plan does not match the approved plan and stated that the property owner could come back to address this by amendment to the site plan. The Board concurred with K. Kelley's suggestion of a six month occupancy permit and working out something to address the ADA requirement for handicap parking at the left rear of the building.

Board members agreed to revise the performance agreement to include a six-month Certificate of Occupancy which will allow the property owner to amend the plan before the Board. R. Spoerry suggested legal review of the conditional approval. A review of Jones and Beach Engineers inspection letter of November 24, 2010, and the ten items listed as remaining. T. Franciosa stated he felt the Board should require another inspection before a Certificate of Occupancy is issued.

*(K. Kelley excused himself from the meeting at this time.)*

Following discussion, the Board amended item number three of the performance agreement (as shown above). Suggestion was made to have counsel review the performance agreement document in conjunction with the six-month Certificate of Occupancy. C. Brown stated that this document is a standard form used by the Town.

**MOTION:** To accept the performance agreement as amended with the condition that it is reviewed by town counsel.

**MOTION: L. SMITH**

Following additional discussion, this motion was withdrawn.

**MOTION:** To accept the performance agreement for Map 7, Lot 70 as amended.

**MOTION: L. SMITH  
SECOND: B. MUTRIE  
UNANIMOUS**

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**F. COMMUNICATIONS TO BOARD MEMBERS**

**TOWN ENGINEER – JONES AND BEACH ENGINEERS:** C. Brown read a December 10, 2010 letter received from Jones and Beach Engineers in response to the Board's request that the Chair express its concern with a recent application presented by Jones and Beach Engineers. It was determined that there is no problem with the work provided by Jones and Beach Engineers to the Town as Town Engineer and that Jones and Beach Engineers' position that they will no longer perform future private work for individuals or developers before the Hampton Falls Planning Board is acceptable.

**2011 BUDGET:** C. Brown referred the Board to the proposed Planning & Zoning budget for 2011. She explained that the Chair of the Board of Selectmen has asked that this matter be brought to the attention of the Board. A review of the Planning Board Organization, Rules and Procedures took place with regard to Duties of the Chairman which includes preparation of the budget.

**MOTION:** To approve the Planning and Zoning budget as prepared and presented by Chairman C. Brown and forward to the Board of Selectmen.

**MOTION: B. MUTRIE**  
**SECOND: R. SPOERRY**  
**UNANIMOUS**

**G. ADJOURNMENT**

**MOTION:** To adjourn the meeting at 11:00 p.m.

**MOTION: L. SMITH**  
**SECOND: R. SPOERRY**  
**UNANIMOUS**