

**HAMPSTEAD BOARD OF ADJUSTMENT MINUTES  
NOVEMBER 1, 2012**

Members present: Kristin Yassenka, Geoff Dowd, Neil Emerson, Dale Blaine, John Lisien and alternate Don Reese. Also present was Chief Building Official, Kris Emerson.

A copy of the posting notice, abutters notice and a list of persons attending is a part of these minutes.

**LOON ISLAND REALTY TRUST 3/152**

The request was for a Special Exception to permit seasonal conversion at 80 Holiday Lane. The lot is .28 acres. The hearing was continued from October. The applicants – Lawrence Buswell and Nelson Blinn – were represented by Jim Lavelle. He presented members with a packet of history of the property. There is a 2-bedroom septic design with a pump system at the furthest distance from the lake. Soil-based calculations indicate there is 28% of the required lot size. John noted that there is one bedroom now. Jim said they are not asking for two bedrooms even though the septic is designed for two. The owners were denied a variance for seasonal conversion in 2005. Kris said he would be checking everything – electrical, plumbing, heating, etc. before issuing a C.O. Jim said the house is on a right of way – not a town road, so there is no frontage. There were no comments from abutters. Geoff made a motion to permit seasonal conversion with the conditions it remain two bedrooms and that it meets all town codes. John seconded the motion and the vote was unanimous to grant the request.

**SCOTT LANCASTER 11/60**

The request was for a variance to permit a 2-lot subdivision on a private road off Lighthouse Lane. The lot is 4.04 acres. The request was continued from October. Don Reese sat in for Geoff. The applicants were represented by Jim Lavelle. He showed a chart of all the private roads in town. The proposal is for a total of two lots with frontage on Estee Rd. It is not a Class VI road. Jim said there are 7 lots serviced by the road. They are only creating one 2 acre lot. He said it will have to meet soils calculations when they go to the Planning Board. The owners will also be selling a small portion of their lot to neighbors. The size will depend on soils. Neil asked if it were a road or a driveway. He said Estee Road is a private road. The original subdivision was in the early 1980s. Jim addressed the requirements for a variance. He said the lot is much larger than most. It is a reasonable use of the property. There will be no diminution of property values. He showed a letter from a realtor stating it would enhance surrounding property values. He said the property is unique. He read recent Supreme Court decisions relating to variances. He said there would be no gain to the public by denying the variance. There is no threat to public health or safety. John asked how road the right of way is. Mr. Lancaster said it is only about 1 ½ car widths – about 12 ft. He said at least eight people use the road now. There were letters from abutters Charles Harnish, Paul George and Mark Ferraro stating they had no

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objection to the proposal. Mr. Ferraro said he was in favor as long as there is only one new lot. Abutter, William Keating, 5 Croy Path, said the right of way is over his property. He said it is a very narrow driveway. He said there is a risk of injury because of increased traffic. He said it was meant for summer traffic use. He asked who would provide road maintenance. He is opposed to the intrusion on his privacy. He said it would permanently alter the value of his property. He said there is no frontage on any road. Kristin said the board has no jurisdiction on the issue of right of way. Abutter, Rick Atwood, said he owns Estee Rd. to the lake. He said five properties use Estee Rd. and two are year-round. He said he didn't want anyone taking his road. It has been in the family since 1946. He is also concerned about traffic. Mr. Keating said foot traffic would be his liability. Neil asked if he knew there was an easement across his property when he bought it. He said he did but that he was concerned about increased use. Abutter Elaine Champion, 7 Hood Road, said was not in favor. She said the applicant hasn't met the requirements for a variance. She said the overcrowding is not in the spirit of the ordinance; it is not in the public interest. She is concerned about setting a precedent. She said it will change the character of the neighborhood and decrease property values. She said there is not hardship. Planning Board chairman Randy Clark, showed photos of the area. He said access is across private properties. He said it was meant for summer homes. He said Estee Road is a gravel path through the woods and is not maintained. He said it does not meet the hardship test and that the subdivision is premature. Kristin asked how many private roads are paved. John said very few. Neil asked Mr. Lancaster if he would make the road wider. He said it could be done. Attorney for the applicants, Frank Quinn, said the addition of one dwelling will not severely impact the area. He said it is a reasonable use and that there is hardship there. Kristin noted there are many more hurdles before the issuance of a building permit and that the selectmen might be included. Elaine Champion said the spirit of the ordinance, and setting a precedent is all the board should be considering. She said they should not be muddying the issue. Kristin said she was okay with the issue of hardship but not with spirit and intent. John said this was not what was intended for the area and there are a fair amount of neighbors' concerns. John made a motion to permit a two-lot subdivision with frontage on a private road. Dale seconded the motion. Members filled out their worksheets. The request was denied 4-1. Dale cited spirit and intent and hardship. Kristin said there was no substantial justice and it did not meet spirit and intent by creating a lot on a road such as Estee Road. Don voted against because the present use is appropriate it did not meet spirit and intent, property values would be affected, and there is no substantial justice. John voted against. Neil voted in favor.

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**MATTHEW LANNAN**      **2/41**

The request was for a Special Exception for a home occupation – carpentry – at 515 Main St. The lot is 1.03 acres. Geoff returned to the board. Mr. Lannan said there is no work done out of the house. He would like to have a sign out front. There are no employees and no increased traffic. Equipment is kept in a large barn and is not seen outside. There were no comments from abutters. Geoff made a motion to permit the home occupation. Neil seconded and the vote was unanimous to grant the request.

**EDWARD DELOREY**      **11/57**

The request was for a Special Exception to permit the removal and rebuilding of a seasonal dwelling at 275 Pond View Drive. The lot is .115 acres. The applicant is also seeking a variance to permit the new house to be too close to the road. The applicant was represented by Kevin Hatch. He said the rebuilding of the house will get it back onto the correct property. There will be the same setback to the shore. It will be the same footprint. It abuts the Angle Pond Woods condos. There are currently two bedrooms. There will be no expansion. An enclosed porch will bring it 20.3 ft. from the road. It is now 27 ft. from Pond View Drive. The septic is being replaced. The well will be removed and the house will be connected to Hampstead Area Water Co. He showed the proposed house plan. It is currently 868 sq. ft. and will be, with the new porch, 868 sq. ft. Ralph Miele represented the Angle Pond Woods Association. He said he was in favor of both the Special Exception and the variance. Kevin said the plan meets the 66 percent second floor area. He was asked if he had D.E.S. approval. He said it was pending and suspected it was delayed because of the storm and loss of power. Neil said everyone else has been required to have the DES approval at the time of the hearing. John said the storm was a unique situation. Geoff agreed, but on this case only. Kristin said the house plan might change, based on the DES decision. She said the board needs to be consistent with the terms of the application. Kevin said they could do nothing without the DES approval. Kristin polled the board whether or not to proceed without DES approval. Members proceeded with the vote on the Special Exception. Geoff made a motion to permit the removal and rebuilding of a seasonal dwelling, per plan presented. John seconded the motion and the vote was unanimous to grant the request. Neil questioned whether he should step down because of his feelings about the missing DES approval. He stepped down and Don sat in. Kevin was not prepared to address the requirements for a variance but answered the questions as Geoff posed them to him. John said the proposal was less offending. Geoff made a motion to permit the new structure to be 20.3 ft. from the road, per plan submitted. John seconded the motion. Members filled out their worksheets. The vote was unanimous to grant the request.

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**ROBERT MOSELEY      8/27-1**

The request was for an Appeal of an Administrative Decision of the Chief Building Official and/or for a Special Exception for a home occupation – landscaping – at 19 Old Forge Rd. The lot is 1.27 acres. The applicant was represented by Attorney Jim Troisi. Neil stepped down for the appeal. Don sat in. Jim said Mr. Moseley has been in the landscaping business since the 1980s. He said there is limited activity on the site. He said that Kris Emerson, Chief Building Official, had once told the applicant that no home occupation permit was needed back when the lot was subdivided. Jim said it is an exempted occupation. He said no customers come to the house. No customer vehicles come to the site. He said this should be exempted. Kris had sent the applicant a letter saying that one 8-year employee comes to the site and that there are some small trucks. Att. Troisi said those are the same trucks Mr. Moseley has had for years. Mr. Moseley said the trucks are delivering loam to the rear of the house by his mother's driveway. Geoff asked why not make it a home occupation. John agreed. John asked if any equipment is stored in view. Jim said all the equipment – a truck, two dump trucks, mini excavator, are parked behind the house –out of view. Mr. Moseley said none are commercial. Abutter, Megan Marley, said she is heavily affected by the business. She had photos of the trucks. She said between 2008 and 2011 there were 2-3 employees and that there were trucks coming and going all day. She said there is a backhoe, flat bed, bobcat and hydro-seeder. She said Mr. Moseley stores loam on his property. She said he brings in trees and yard debris and burns them. She said she had a video of loam delivery. She said other neighbors have complained as well. Kristin asked if she could see the equipment. She said she cannot when they are parked in back of the house. John asked if there were a lesser business that she would not object to. She said yes, if the back and forth activity were only once a day. She said this affects the value of her property. Att. Troisi said the business has not increased over the years. Kristin said she didn't think it needed a permit because there is no equipment visible on the property. Geoff said, but it is not exempted because vehicles come to the location. John said the vehicles are associated with business activity. Geoff made a motion to approve the appeal. John seconded. John, Don, Dale and Geoff voted against. Kristin voted in favor. The decision of the Chief Building Official was upheld. Don stepped down and Neil returned to the board for the request for a home occupation. Att. Troisi said the use is incidental to the home and there is no physical evidence outside the home. There is no sign. There are no more than two additional employees. He said the frequent trips with large trucks do not happen daily. Abutter, Robert Marley, said the business activity is too big for the neighborhood. He said he didn't want to put Mr. Moseley out of business – only that it was too big for the less than 1/10<sup>th</sup> of a mile road he has to travel. Don Reese, speaking as a member of the community, said this is what the home occupation ordinance was written for. He said there is evidence that other abutters have no objection. Neil asked if there were gravel or stone. Bob said there was none and no mulch. Dale and John said they wanted some

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guidelines. Att. Troisi said nobody in the neighborhood had complained in years. He said if it increases from what has been presented, Kris will check into it. Dale said there should be some limitations in a residential neighborhood. Geoff made a motion to permit a home occupation – landscaping business. John seconded the motion and the vote was unanimous to grant the request. Geoff said this will give the Chief Building Official some control. Neil agreed.

**OTHER BUSINESS –**

Minutes – The minutes of the October hearing were unanimously accepted as written.

Discussion – There was discussion about the procedure for applicants to file with the Board of Adjustment. The instructions and procedures currently state that something must be denied. Members determined that should be changed to read “must be denied or referred---“

Respectfully submitted,

