

<b>ZONING BOARD OF ADJUSTMENT</b>	<b>March 28, 2024 7:00 PM</b>
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**A. CALL TO ORDER:**

J. DeLeire, Chairman, called the meeting to order at 7:08 PM.

**B. ROLL CALL:**

**3 MEMBERS and 3 ALTERNATES PRESENT:** John DeLeire, Chairman; James Manna, Member; Michael LaBarre, Member; Stephen MacLeod, Alternate; Jude Augusta, Alternate Patti Young, Alternate.

**3 ABSENT:** Steve Bryant, Vice-Chairman; Weezie Vance, Member, Jamie Hasenfus, Alternate.

**STAFF:** Mark Sikorski, Building Inspector; and Rachel D. Webb, Assistant Administrator.

**GUESTS:** Justin Pasay, Attorney, DTC Lawyers; Chandler Hutchins, Fleury Enterprises; Robert Clarke and Stephen Mayer, Allen Major Architects

Chairman DeLeire stated that there were three (3) ZBA Members and three (3) Alternates present. The five (5) voting Members for the meeting were: J. DeLeire, J. Manna, M. LaBarre, S. MacLeod, and J. Augusta. Chairman DeLeire clarified that the additional one (1) Alternate, P. Young, could participate in the discussion of the meeting up to, but not including, the vote.

**C. PUBLIC HEARING:**

- 1) **Case #24-01:** Continuance of Rehearing from January 25, 2024, from Justin Pasay/Al Fleury regarding Case #23-08 from **3 Weare Road LLC**, for a **Variance** to the terms of **Article III, Section 1**, to permit a light commercial storage and vehicle maintenance use at the Property in addition to the existing single-family residential use, in Zone A/R, Agricultural Residential, at property located at **3 Weare Road, Map 1, Lot 21**.

Justin Pasay, Attorney with DTC Lawyers for the applicant, 3 Weare Rd LLC, summarized that this was the second hearing on their Rehearing Request in response to seven (7) questions the ZBA posed as a result of the January 25, 2024 ZBA meeting. J. Pasay had Mr. Chandler Hutchins with him, who is the sole employee onsite, and who is a mechanical engineer. J. Pasay stated that many of the questions were related to the proposed equipment and vehicle maintenance use. He stated that the applicant has characterized the proposed use as minor vehicle maintenance and upkeep that is taking place inside the large five-bay garage. He continued that the appearance of the five-bay garage is commercial in nature, and proposed types of work performed in the garage includes: changing brakes, replacing suspensions, changing oil, replacing brake fluid, replacing transmission fluid, replacing old gasoline, replacing hydraulic fluid, and minor vehicle maintenance work. J. Pasay stated that the only one (1) person doing vehicle maintenance work on the property is C. Hutchins. C. Hutchins is not performing more significant work like the replacement of engines, replacement of transmissions. He stated that any type of large-scale work that requires special tools would be completed commercially by a third party off-site. Any fluid that is removed pursuant to these operations is stored in one (1) of two (2) fifty-gallon (50-gal.) drums located inside the garage. J. Pasay stated that there was a

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prior question about a drum stored outside of the garage, and he stated that the drum outside has nothing to do with the vehicle maintenance use at all, and was acquired to store water on a different property for Mr. Fleury's birthday last Fall. It was a fire suppression measure only for water. J. Pasay explained that when the two (2) indoor storage drums are full, they are serviced professionally by a company (Safety Clean) and their contents are disposed off-site.

J. Pasay noted that C. Hutchins is the single employee doing the work on-site, and he is the one employee projected into the foreseeable future who will be doing the work on-site. He has experience handling petroleum, that is defined by the zoning ordinance as hazardous or toxic substances. J. Pasay stated that C. Hutchins holds a 40-hour OSHA license for hazardous waste operations and emergency response certification. C. Hutchins also has eight (8) years of bulk oil storage experience at Sprague Energy and Global Petroleum prior to working for the Fleury Group. He has handled more than eight-million gallons of petroleum, and J. Pasay summarized that C. Hutchins is a very qualified person doing the work on-site at 3 Weare Road.

J. Pasay reviewed the context of his applicant's original proposal in Fall 2023. He stated that the Fleury Group owns approximately fifty (50) vehicles across several business enterprises, and of those fifty (50), there are thirty (30) vehicles and pieces of equipment that are permanently stored off-site. The remaining twenty (20) vehicles and pieces of equipment are the subject of discussion for this case. He stated that in the Fall 2023 he took pictures that were submitted as part of the application when the vehicles were inventoried as: five trucks, five trailers, and a lull. He reported that in January 2024 when he visited the site, there were fewer vehicles present, and earlier this week (when he was onsite to discuss wetlands remediation plan implementation with the wetlands scientist), there were hardly any vehicles on-site, and the Connex boxes had been removed. In summary, there will be a rotation of the twenty (20) vehicles and equipment which are occasionally serviced by C. Hutchins inside the garage.

In the Fall 2023, the applicant provided a list of eight (8) proposed Conditions of Approval as part of the original materials submitted to the ZBA, and now, the applicant is proposing four (4) additional Conditions of Approval to address the issues raised by the recent ZBA meeting in January 2024. Two (2) of those four (4) new conditions are as follows:

~~9.~~ 8. *The single employee performing the minor vehicle and equipment maintenance function at the Property is required to maintain the 40-Hour OSHA HAZWOPR (Hazardous Waste Operations and Emergency Response) Certification.*

~~10.~~ 9. *The vehicle and equipment maintenance operations will not expand beyond the characterization of the operation provided by the Applicant during the hearing process and the Applicant will, pursuant to its anticipated Site Plan Review with the Planning Board, obtain written confirmation from the State of New Hampshire that its operation complies in all regards with all applicable State regulations in this context.*

J. Pasay read into the record the applicant's additional materials submitted in response to the seven (7) questions posed at the January 25, 2024 ZBA meeting.

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1. **Significantly affect the character of the neighborhood.** J. Pasay stated that the applicant rests on the analysis provided in their original filing. He stated that this relates to two (2) of the variance criteria, namely a) the “spirit of the ordinance” and (b) “the public interest” criteria and whether or not the proposal conflicts to a marked degree with the zoning ordinance. He continued, stating that results of Supreme Court cases instruct ZBAs to ask “*whether the proposal will change the essential character of the neighborhood*”, and, “*is there going to be a threat to the public health and safety*”. J. Pasay stated that the applicant’s position is that they are not violating the essential character of the neighborhood because their use is consistent with the historic use of the property, which was used for a septic tank service business, and as a space to service Town vehicles that were servicing the Town roads.

The applicant presented a **new Enclosure #16** that was a letter from Paul Lepere, who was the selling real estate broker when Al Fleury purchased the property. J. Pasay read the following excerpts of P. Lepere’s letter: “*I was the Listing Agent for Rick Merrill when Mr. Fleury purchased the property. Rick and his father used the property for multiple businesses and prior to Al Fleury’s purchase there were quite a few inoperable trucks on the property for years. There were many outside storage areas that had engines and truck parts laying around. It took Rick many months to remove these from the property prior to the sale. I see a marked improvement in the property since Al Fleury purchased it, and it now has a much cleaner appearance. The property looks more residential, which does not deter from the neighbors’ property values. The negative aspect of this neighborhood would be the multi-family apartment buildings that are directly across the street.*”

J. Pasay stated that the applicant’s position is that A. Fleury has improved the property, which can be seen in the historical photos provided in the application that date back to the year 2011, there is today (by comparison) less equipment and less trucks, and less stuff outside currently than there was historically, and that is in addition to the more aesthetic improvements which have been made to the property. J. Pasay asserted that the essential character of the neighborhood has not been jeopardized. It is consistent with the historic use of the property since the 1980s when the Merrills purchased the property. He continued that the applicant’s position is also that the proposal does not threaten the public health or safety.

2. **Likely diminution of property values.** The Applicant stands on the analysis it provided in its application narrative. The ZBA is required to determine that the proposed use will not diminish surrounding property values. As discussed in section E.4 of the variance narrative, the proposed use appears largely consistent with the historic use of the Property since at least 1987, when Rick Merrill bought the Property and began living there. We understand that at or about that time, Mr. Merrill began keeping and servicing vehicles and equipment owned by himself and his father, Dick Merrill, which were utilized in the Town’s road maintenance operations. Further, the Applicant understands that Mr. Rick Merrill owned and operated Rick’s Septic Tank Service, inclusive of trucks and other equipment, out of the Property, and utilized the garage space and “barn” which appear to have been built in 1988 and 1986, respectively, in furtherance of said business. **See Enclosure 7.**

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As a similar use appears to have existed at the Property for decades, and as the proposed use appears in some contexts to be less impactful than the previous use (see Enclosure 9, historic aerial photographs of the Property), the assessing data provided with the original Application is telling. As discussed in Section E.4 of our original filing, the property values of the two closest abutters to the Property (37 Mill Lane and 1 Weare Road) appear to have consistently gone up, as have the assessments for the Property itself. See Enclosure 15.

Finally, in response to this question, the Applicant obtained the opinion of Paul Lepere from the Hamptons Real Estate. See Enclosure 16. Mr. Lepere notes in summary that *“I do see a marked improvement since Al Fleury purchased, and [the Property] now has a much cleaner appearance. The Property looks ‘more residential’ which does not deter from the neighbors’ property values.”* See Enclosure 16.

3. **Hazardous waste potential.** Please see above description of work. The fluids removed from vehicles as discussed above appear to constitute “toxic or hazardous materials” as broadly defined by the Zoning Ordinance but the Applicant notes that the use is not an “automotive servicing station,” as no fuel is sold, and the Property does not appear to be within the Town’s Aquifer Protection District pursuant to the Town’s Stratified Drift Aquifers Map dated 2015. See Zoning Ordinance, Article 1, Section 4.

The Applicant proposes to continue the operation as described above and, as discussed in greater detail below, requests an additional condition of approval that in conjunction with the Site Plan Review before the Planning Board requirement that will have to occur, the Applicant provide written confirmation from the State of New Hampshire that the proposed use complies in all respects with all applicable State requirements.

4. **Identify remediation efforts to comply, and management to ensure compliance with hazardous waste potential.** See description of work above, and answer to question number 3, above.

5. **Describe maintenance activities and hazardous waste generation.** See description of work above, and answers to questions number 3, and 4 above.

6. **What are the only maintenance activities performed on-site?** See description of work above, and answers to questions number 3, 4, and 5, above.

7. **Is the HVAC business operating out of the Property?** Al Fleury is the manager of a business entity named *603 Refrigeration, LLC* (the “HVAC Company” or the “Company”) (copy of 2023 Annual Report attached as new **Enclosure 17**). The HVAC Company provides plumbing, heating, and air-conditioning services, primarily in New Hampshire and Massachusetts. As indicated on Enclosure 17, and since its inception, the business is registered to one of A. Fleury’s business offices located in Portsmouth, NH. In 2023, an amendment to the

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LLC's Certificate of Formation was filed to also list A. Fleury's new headquarters office in Hampton, NH.

Though the number of employees of the HVAC Company vacillates from time to time contingent upon the demand for services, there are, at any given time, between 4 and 10 employees working for the Company. At any given time, the Company owns between 6 and 8 vehicles. Historically, the Company has operated out of Plaistow, NH which is where the main employee of that company lives, and where the majority of the Company's vehicles and equipment are kept. No HVAC Company materials get sent to the Property, no maintenance work is done on 603 Refrigeration vehicles at the Property, and no fabrication or rebuild activity takes place at the Property. Those activities take place at other locations.

However, like other businesses owned by the Applicant, the Property has been used to store some materials, such as extra duct work, and compressors, and trucks. Additionally, because the Property is centrally located between the New Hampshire and Massachusetts regions the Company services, the Property is frequently used as a place for employees to rendezvous and/or pick up a truck that is being kept out back. This data is reflected in **Enclosure 18**, which depicts a representative example of vehicle activity at the Property associated with the Applicant's businesses, during the week. More specifically, the Applicant's team studied surveillance footage of activity on Monday, 29 January 2024; Wednesday, 7 February 2024; Thursday, 15 February 2024; Tuesday, 20 February 2024; Friday, 1 March 2024; Wednesday, 6 March 2024; and Tuesday, 12 March 2024; and detailed the nature and scope of the activity. Enclosure 18 notes the time at which a vehicle arrived, as well as a reference to who was driving the vehicle. The vast majority of the activity was very transient in nature, and lasted only a few minutes. In those instances, the time of departure for the car is not noted. Where activity continued for a more considerable period of time, **Enclosure 18** depicts the departure time.

**Enclosure 18** also depicts vehicle trips which are not associated with the Applicant's businesses. The data in enclosure #18 depicts that on the cross section of information provided, intended to constitute a standard work week in the operation of the Property, the average trips in any one day associated with any of the Applicant's businesses is 14 (one trip for a vehicle arriving, and one trip for the same vehicle departing). As you will note, on several days, a significant percentage of the traffic is the coming and going of C. Hutchins. The data indicates that the traffic to the site is fairly spread out during the day and constitutes, considering an average 8-hour day, one vehicle arriving every 69 minutes. J. Pasay offered the comparison in use and traffic trip generation to the 72-unit residential apartment building across the street (in Seabrook) and stated that the Applicant's position is that the proposed use at 3 Weare Road is de minimus by comparison.

The applicant proposes to continue the storage of the HVAC Company vehicles and miscellaneous equipment at the Property and proposes the continued basic traffic to the Property discussed above but does not propose that the HVAC Company activity at the Property be expanded in any way. We have proposed an additional Condition of Approval to address this matter, referenced below. J. Pasay added that if the difference between a "yes" and a "no" vote from the ZBA is related to the activity of the HVAC Company at 3 Weare Road, then the

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Applicant would be willing to prohibit the use of the Property for the HVAC Company, and are willing to add that Condition of Approval.

## **Additional Proposed Conditions of Approval**

The Applicant previously proposed eight (8) distinct conditions of approval to preemptively address concerns which its proposed use, inclusive of the light commercial storage use, may cause. As the Applicant has already performed a few of the proposed conditions of approval, we reflect below minor amendments to the original proposal in redline. We note that previously proposed condition 6, pertaining to the gate on the Property, is no longer required because the Applicant has already removed the same.:

1. Only a single employee with the primary responsibility of maintaining the Applicant's vehicles and other equipment on the inside of the Garage, will work at the Property per business day during normal working hours (i.e. 8:00AM to 5:00 PM).
2. No outside maintenance of any machines, equipment or vehicles will be allowed.
3. The Applicant ~~will~~ has permanently removed from the site all four Conex storage containers previously located at the Property, as depicted on **Enclosure 1**. The Applicant will ensure no Conex storage containers will be sited at the Property in the future. See also Enclosure 14 (depicting proposed conditions).
4. No more than one trip per day by the Applicant or its employees will be permitted to accommodate the dropping off or retrieval of personal or business-related property stored at inside the Property. J. Pasay stated that this was a bit inarticulate on the part of the Applicant. He asked the ZBA to recall the proposed use is a *commercial storage use* because there is a 6,100 square foot open storage area in the Property, and then separately there is the *vehicle maintenance use*. This Condition of Approval proposal was always oriented to the first use and the seasonal needs of the Applicant's hospitality businesses to rotate and access stored items.
5. The Applicant will replace all outdoor lighting on the rear (northern) side of the Garage with night-sky compliant (or equivalent) lighting.
- ~~6. The Applicant will replace the existing gate on the west side of the Property to ensure there is no temporary encroachment onto the abutting property when the gate is open unless the Applicant secures a license or easement from the abutting property owner and provides proof of same to the Town.~~

~~7.6.~~ The Applicant will comply fully with the recommendations of West Environmental's Wetland Restoration Report, as ~~potentially amended or altered~~ approved by DES ~~upon DES's review.~~ J. Pasay provided an update as of this week that the wetlands scientist and the contractor have identified the start date for the wetlands restoration work is going to be April 15, 2024.

~~8.7.~~ The Applicant will prepare a Site Plan Review Application and file same with the Town's Planning Board.

In addition to these proposed conditions of approval, the Applicant proposes the below conditions to address other concerns and issues raised by the ZBA:

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~~9.8.~~ The single employee performing the minor vehicle and equipment maintenance function at the Property is required to maintain the 40-Hour OSHA HAZWOPR (Hazardous Waste Operations and Emergency Response) Certification.

~~10.9.~~ The vehicle and equipment maintenance operations will not expand beyond the characterization of the operation provided by the Applicant during the hearing process and the Applicant will, pursuant to its anticipated Site Plan Review with the Planning Board, obtain written confirmation from the State of New Hampshire that its operation complies in all regards with all applicable State regulations in this context.

~~11.10.~~ The HVAC Company will not expand its use at the Property beyond the characterization provided by the Applicant in this narrative and at the hearing. If the ZBA does not want any of that use associated with the Property, while the Applicant thinks it is reasonable under these circumstances, that is acceptable to the Applicant.

~~12.11.~~ The Applicant will agree to produce a Traffic Impact Study in conjunction with its anticipated Site Plan Review application to the Town's Planning Board. J. Pasay stated that he views the Property as a site that does not produce a lot of traffic, but to satisfy any concerns that either the ZBA and that the Planning Board may have, the Applicant is willing to proactively complete a Traffic Impact Study.

**Chairman DeLeire** asked if any members of the ZBA had questions for the Applicant.

**S. MacLeod** commented on the new Condition of Approval #8 regarding OSHA inspections and stated that when OSHA does inspections, they are not going to only look at the fuel storage and disposal containers, they are going to look at everything such as: the lifts, the sandblaster, the welding equipment, the open wells, etc., and he wanted to confirm that the Applicant was aware of the comprehensive nature of an OSHA inspection, and C. Hutchins had no objections nor comments.

**J. Augusta** requested a description of the new lighting for the night sky lighting proposed.

**J. Pasay** stated that his general understanding of night-sky compliant lighting is that it dampers ambient lighting. He continued that the Applicant is sensitive to the neighbor's concerns at 1 Weare Road and stated that there was one (1) floodlight that was facing towards 1 Weare Road that was adjusted in response to the neighbor's comments. J. Pasay stated that it is really a Planning Board function, but the Applicant is open to any suggestions and will comply with any recommendations, regardless of the expense associated with it when it comes to lighting. He continued that A. Fleury wants to be reflective of the issues the neighbors have raised. C. Hutchins told J. Pasay that the original lights that were installed have been shut off. J. Pasay said that the lights were installed for security purposes and may have been on motion sensors. He said that the Applicant is willing to tailor the lights to the operation or to the hours of business or however the Planning Board or the Zoning Board sees fit.

**Chairman DeLeire** opened the hearing to Public Comment, and he read into the record the letter submitted by abutters Neil and Ellen Pond.



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Dear Chairman of the Zoning Board of Adjustment,

Regards to the adjustment request of 3 Weare Rd.

We do not agree that "The Applicant's Proposed Use of the Property" is similar at all to the situation that existed with Rick Merrill. In fact, we are firmly against the passing of this present Case #24-01 at 3 Weare Rd. Rick Merrill resided at 3 Weare Rd; he left his residence in the morning, did his work off site and returned to his residence when his work was done for the day.

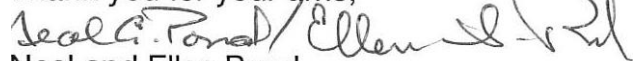
We believe that passing this variance to allow a Maintenance/ Storage Facility to exist in a Residential/ Agricultural zoned area is certainly not a good precedence for the Town of Hampton Falls and so feel it should not be passed.

We have observed that the following operational constraints have not been followed:

1. Only a single employee with the primary responsibility of maintaining the Applicant's vehicles and other equipment on the inside of the Garage, will work at the Property per business day during normal working hour (i.e. (8AM to 5:00 PM).
2. No outside maintenance of any machines, equipment or vehicles will be allowed.
4. No more than one trip per day by the Applicant or its employees will be permitted to accommodate the dropping off or retrieval of personal or business-related property stored at the Property.
5. The Applicant will replace all outdoor lighting on the rear (northern) side of the Garage with night-sky compliant (or equivalent) lighting.

We firmly disagree that "The Applicant's Proposed Use of the Property" is similar at all to the situation that existed with Rick Merrill and should not be passed.

Thank you for your time,



Neal and Ellen Pond

37 Mill Lane

**Chairman DeLeire** closed the Public Comment seeing no one else requesting to comment.

**J. Augusta** commented regarding proposed Conditions of Approval #1 and #4 that the ZBA has no documented records to counter or to refute the Applicant's claims of compliance, and he stated that it would be difficult for him to make a decision.



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**Chairman DeLeire** commented on how well prepared the Applicant was and that he made an excellent presentation. He continued that unfortunately the ZBA has heard from some residents, similar to the comments heard tonight. As much as J. Pasay made representations that there are a number of things that the Applicant is willing to do, Chairman DeLeire stated that he was making a Motion to Deny Case #24-01 for the following reasons:

- 1) The Variance would be contrary to the public interest because it would alter the residential character of the neighborhood and would pose a threat to the public health, safety, and welfare.
- 2) For the same reasons, the Variance would not observe the spirit of the ordinance.
- 3) Granting the Variance would not do substantial justice. The harm to neighboring properties would outweigh the benefit to the Applicant.
- 4) It is likely that granting the Variance would diminish the values of surrounding properties. Neighbors testified about harm to their properties from the current proposed use of the Property. Although the Applicant presented evidence about historical assessed values, no evidence was presented about the impact of the Variance on the future market values.
- 5) Denying the Variance would not cause any unnecessary hardship. There is a fair and substantial relationship between the purpose of the Ordinance's restriction and the application of that restriction to the Property. As stated earlier, the proposed use would alter the residential character of the neighborhood, and the Ordinance is designed to prevent that.

For those reasons stated, **Chairman DeLeire** made the Motion to Deny the application.

**MOTION: To Deny Case #24-01: :** Continuance of Rehearing from January 25, 2024, from Justin Pasay/Al Fleury regarding Case #23-08 from **3 Weare Road LLC**, for a **Variance** to the terms of **Article III, Section 1**, to permit a light commercial storage and vehicle maintenance use at the Property in addition to the existing single-family residential use, in Zone A/R, Agricultural Residential, at property located at **3 Weare Road, Map 1, Lot 21**.

**MOTION: J. DELEIRE**

**SECOND: J. MANNA**

**VOTE: Yes=4, No=1; MOTION PASSED**

**Chairman DeLeire** made the following additional motion:

**MOTION: That Chairman DeLeire work with the ZBA's Land Use Counsel to draft the Notice of Decision and the Findings of Fact.**

**MOTION: J. DELEIRE**

**SECOND: J. MANNA**

**UNANIMOUS**

- 2) **Case #24-03:** Application from **JTC NH LLC**, for **8 Variances** from the Hampton Falls Zoning Ordinance to the terms of:

1.Art. III, Sec. 5 – Table of Dimensional Requirements, max. building height, to allow for the construction of a building up to 42-ft in height where 35-ft is allowed in the BDS district.

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2.Art. III, Sec. 5 – Table of Dimensional Requirements, max. building footprint, to allow for the construction of a building with a footprint of up to 31,300-sqft, where 25,000-sqft is allowed in the BDS district.

3.Art. III, Sec. 8.5.2, to allow building and construction to take place within the wetland setback.

4.Art. III, Sec. 11.4.1 max. number of dwelling units relative to the existing number of dwelling units in Town, to allow for approximately 9.6% where 5% is allowed.

5.Art. III, Sec. 11.4.5 max. allowable density for elderly housing development, to allow for 26.9 bedrooms/ac. where 8 bedrooms/ac. are allowed in the EMFH overlay district.

6.Art. III, Sec. 11.5.1 number of required parking spaces for elderly housing developments, to allow for 150 parking spaces where 220 are required. The required parking ratio is 2.5 spaces/dwelling unit. The project requests a ratio of 1.7 spaces/dwelling unit to be allowed.

7.Art. II, Sec. 11.5.3 max. number of bedrooms in an elderly housing building, to allow for 111 bedrooms where 24 are allowed.

8.Art. III, Sec. 11.5.5 max. building footprint for elderly housing buildings, to allow for a footprint of up to 31,300-sqft where 10,000-sqft is allowed; at property located at **12 Lafayette Road, Map 7, Lot 50 and Lot 51, in Zone BDS-Business District South.**

The applicants **Robert Clarke and Stephen Mayer** of Allen Major Architects introduced themselves on behalf of their client Joe Faro who could not attend the meeting due to travel.

**R. Clarke** stated that the last time the applicant was in front of the ZBA was October 26, 2023, and he recapped some of the major concerns at that time were regarding: parking, height of building, and overall density. He provided a comparison of what was previously (most recently proposed) and their current proposal. He said that one of the variances (the mixed-use variance) was removed, and that all the variances have been reduced. The following chart shows the differences:

<u>Var #</u>	<u>Topic of variance</u>	<u>Oct 2023 ZBA</u>	<u>March 2024 ZBA</u>	<u>Descriptor</u>
	# of housing units	132	88	
1	# of stories, building height	4	3	42-ft where 35-ft is allowed
2	Max. building footprint	58,000 sqft	31,300 sqft	where 25,000 sqft is allowed
3	Wetlands	Filling wetland	Work with in wetland buffer zone only	
4	% units increase	14.4%	9.6%	where 5% is allowed
5	# of bedrooms/acre	44.3	26.9	8 are allowed
6	# of parking spaces		150	220 are required
6	Parking ratios	1.2 spaces/dwelling unit	1.7 spaces/dwelling unit	2.5 spaces/dwelling unit
7	Max # of bedrooms in elderly housing bldg	257	111	24

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8	Max building footprint in the EMFH district	58,000 sqft	31,300 sqft	10,000 sqft is allowed
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**R. Clarke** reviewed the applicant's application materials, in terms of the five (5) variance criteria, and read into the record the following:

*The stated intent of the BDS zoning district is to provide for redevelopment along the southern portion of Hampton Falls Route 1 corridor, in order to enhance the visual character of the gateway into Hampton Falls from Seabrook. The project is uniquely situated to enhance the visual character of the gateway into Hampton Falls because it is the fourth property north of the Seabrook town line. The project will redevelop a property that has been vacant for a decade. The project is intended to be high quality, will include landscape beautifications along Route 1 and throughout the site, and incorporate traditional New England style architecture and elements from the Hampton Falls Design Guidelines. **R. Clarke** stated that if they were approved at ZBA then the Applicant would be going to the Planning Board where there are stringent guidelines to follow. The Applicant indicated the rendering (from the Oct 23 meeting) that showed the style of architecture proposed on a three-story building to include some of the following features: gable roof, small windows, Hardee plank siding. The project includes outdoor amenities space, such as sidewalks. The Applicant has expressed interest in providing walkway paths toward the rear of the site, which could be incorporated into the project with input from the Conservation Commission and the State Wetland Bureau. The project will include site lighting to allow for safe pedestrian and vehicular circulation, and the Applicant will work with NHDOT to ensure safe access to and from the site. The Applicant believes that the spirit of the Ordinance is observed in that justification.*

*Substantial justice is done because the project, which hinges on the connection to Seabrook sewer service, will provide a dramatic benefit to the abutting property owners along Route 1 by beginning the process of connecting the Town of Hampton Falls to the Town of Seabrook's municipal sewer system. During construction, the Applicant would provide stubs along the sewer line to which adjacent property owners could connect.*

**Chairman DeLeire** asked who is going to pay to install the sewer? **R. Clarke** stated that his client has offered to connect five-hundred-feet (500') from where the sewer line stops now in Seabrook, north to 12 Lafayette Rd in Hampton Falls. He continued that he believes there is traction now with Seabrook presenting to Hampton Falls to tie in with an Intermunicipal Agreement. He added that he does not believe that it has been voted on yet, but his client is on the record stating that he would bring 500-ft to 12 Lafayette, including stubs, and a stub for a future connection north. He said that there would need to be located a future sewer pump station within Hampton Falls to accommodate future developments and expansion north of the sewer line beyond 12 Lafayette Rd. **Chairman DeLeire** asked who pays for the pump station?

**R. Clarke** responded that, there would be an Intermunicipal Agreement between the Town of Seabrook and the Town of Hampton Falls, and if his client could not tie-in to a gravity sewer system, then he would locate a pump station at 12 Lafayette Rd to connect to Seabrook.

**Chairman DeLeire** clarified that the installation of that sewer system would be at the sole expense of the developer, and **R. Clarke** confirmed. **Chairman DeLeire** followed up and asked

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if there would be annual maintenance and/or service fee for the sewer service, and **R. Clarke** responded that there would and that the developer would pay for that.

**Chairman DeLeire** stated that the Applicant was making certain representations that the ZBA would like to see confirmed and justified or backed-up in writing. For example, he noted the statement that the project will generate \$500,000 tax revenues annually, and **Chairman DeLeire** asked where did that number come from, and how was it calculated? **R. Clarke** said that the tax benefit number was calculated by multiplying the number of units (88) by the tax rate, based on their value. Additionally, he stated that the ZBA could include the request for additional confirmation of representations as Conditions of Approval.

**M. LaBarre** asked if the Applicant had allocated space at 12 Lafayette Rd for a sewer pump station? **R. Clarke** stated that the space has not yet yet been allocated, but there is dry land up front where one could be located. **S. MacLeod** requested confirmation that the developer would pay for: sewer extension to 12 Lafayette Rd., existing water line upgraded to 12 Lafayette Rd., a sewer pump station (if needed), sewer stubs outs, maintenance of all sewer and water infrastructure installed, and **R. Clarke** confirmed. **R. Clarke** stated that there is an existing water line to the site from the former restaurant (Faro Gardens) that was previously located at 12 Lafayette Rd, but the water line would need to be upgraded in size. **J. Manna** commented that he thought the existing water line was a one-inch size, and **R. Clarke** stated that the proposed residential buildings would need to be sprinkled for fire suppression, so an upgrade of the water line size would be necessary.

**R. Clarke** continued with his presentation addressing the five (5) variance criteria: *In addition to the sewer stubs that would be provided at the end of the sewer line, which could be used in the future by property owners north on Route 1, as coordinated by the Town, this would increase the potential opportunity and availability to many Hampton Falls property owners. Site specific requirements place strict limitations on development. The project will generate an estimate of half-a-million dollars in tax revenue for the Town of Hampton Falls. The negatives of the project would be minimal because the project would be constructed in accordance with the local and state requirements. The project will go through the site plan review process with the Planning Board which will ensure compliance with the Town's Design Guidelines. A NH DOT driveway access permit will be required, and that review process will ensure that the project will provide safe vehicular and pedestrian access to and from the site. The Applicant believes that substantial justice is done with those justifications.*

*A NH DES Alteration Terrain permit will also be required and their review process will ensure that the stormwater runoff will be appropriately managed onsite and will not adversely affect any neighboring properties. A NH DES Wetland Bureau permit will be required and their review process will ensure that the work within the wetland setback is performed in a reasonable manner. The project respects the requirements of the underlying and overlaying zoning districts in terms of the structural and improvement setbacks required, and the project will maintain existing natural buffers along the site's perimeter to the maximum extent possible.*

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*The proposed use is age-restricted housing. Chairman DeLeire asked if the housing was going to rental units or owned, and R. Clarke responded that the units will be for sale and will be owned. R. Clarke continued his presentation: The age-restricted housing is an allowed use because it is located in the EMFH overlay zoning district. The very existence of the EMFH overlay zoning shows that the Town has provided the opportunity for this type of housing development, which meets the stated purpose of the district to ensure continued availability of a diverse supply of housing ownership opportunities in the town.*

*Currently storm-water flows untreated directly from the gravel area on the site and into the Prime Wetlands. The proposed development will be designed to capture and treat stormwater and then discharge it to the neighboring wetland area.*

*Granting the Variance will not diminish the values of surrounding properties because the proposed project will be constructed to a high level of quality and will redevelop a property that has been vacant for a decade. The property will contribute to beautifying the southern Route 1 corridor by installing new landscaping and a substantial buffer will separate the project from abutting land uses. The proposed age-restricted residential use is not generally associated with offensive amounts of odor or noise. The project requires a connection to the Seabrook sewer system giving the abutting property owners the same opportunity. The possibility of a municipal sewer connection will increase the value of the surrounding properties.*

*The literal enforcement of the provision of the ordinance would result in an unnecessary hardship. The Applicant described the acreage of the site by referencing a plan that showed the total acreage as 11.5 acres, and the buildable area as 5.8 acres that includes a 100-ft wetlands buffer zone, which when the wetlands buffer zone is applied brings the available building site down to 1.15 acres of buildable land. R. Clarke stated that the wetlands on site comprise the hardship of the land, as approximately half of the site has flagged wetlands. 90% of the property can not be used in strict conformance with the ordinance. After many iterations, the area of the proposed project has been reduced to minimize impact to the maximum extent practical. While still proposing a viable project, the use (which is an allowed and reasonable use) will be of high quality and provide residents with several desirable amenities. A project of this quality requires a significant number of units to be economically viable. Since the vast majority of the land is unusable per the Zoning Ordinance, the project requires an increase in height which the Applicant reduced from 4 to 3 stories, it additionally requires an increase in the building footprint, and density of bedrooms to make the project viable. The Applicant and the design team have made many efforts to reduce the impact of the project since the October 2023 ZBA meeting. The number of proposed housing units have been reduced by one-third (1/3<sup>rd</sup>), the parking ratio has been increased by 25%, and the building height has been significantly reduced. While the number of bedrooms-per-acre still exceed what is allowed, the Applicant believes that the proposed project is in line with the intent of the zoning ordinance. The wetlands and wetlands setbacks create the hardship. If the number of bedrooms allowed were calculated based on the entire property (irrespective of wetlands) the site would allow 92 bedrooms. Given that this proposed project has a maximum of one and two-bedroom units, an 88-unit project seems to be in keeping with the intent of the Zoning Ordinance. The Applicant stated that they often find that*

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*density limitations are linked to specific requirements; since this project will be connected to the Seabrook sewer system it is reasonable to relax the density restrictions of the Zoning Ordinance. Drafters of the ordinance could not envision a project of this size and scope because it is not feasible without a municipal sewer connection. The project also requires a variance from the minimum number of parking spaces required; the ordinance requires 2.5 parking spaces per dwelling unit, with the intent to provide two (2) parking spaces per unit for owners, plus one (1) visitor parking space. The Applicant understands that the ZBA has significant concerns about the project providing sufficient parking for the residents and their guests, and those concerns stem from the ZBA's prior experience with the Meadows/Avesta project in Hampton Falls. R. Clarke stated that that project provided only 1.2 parking spaces per unit. R. Clarke stated that the industry standard for this type of development is between 1.5 and 1.8 parking spaces per unit. The current proposed project provides a parking space ratio of 1.7 parking spaces per unit, which meets the industry standard and will give the residents some flexibility so some will have one (1) parking space, and some will have two (2) parking spaces. Given the mix of proposed one and two-bedroom units, this is acceptable to the Applicant, and will be coordinated with future unit owners.*

***R. Clarke** reviewed the benefits to the Town and stated that he will get the background requested earlier in the meeting regarding the tax impact calculations. He stated that over the past twenty-six (26) years the owner has paid a total of \$11,000 per year in real estate taxes that total close to \$290,000. He continued that the proposed project could generate almost double the amount of taxes collected over 26 years annually. The sewer connection would be 500-feet of municipal sewer with stubs for the Town, and individual stubs provided for abutters along the 500-feet. Age-restricted housing has no impact on schools. The limit on the number of stories is three (3) with no impact on the Fire Department needing to acquire a ladder truck. At the October 2023 ZBA meeting there was significant conversation about the previously proposed four-(4)-story building requiring a full-time firefighter and a ladder truck, so the current proposal to reduce the building to three (3) stories hopefully positions the proposed project more favorably.*

**Chairman DeLeire** asked if the Police and Fire Departments have yet weighed-in on the proposal, and **R. Clarke** responded no. **Chairman DeLeire** confirmed that any alterations to the state highway (Rt 1) would be paid for by the developer, and **R. Clarke** responded yes.

**Chairman DeLeire** inquired about after the condos are sold whether there would be a management company on site to take care of the grounds, etc. and **R. Clarke** responded yes.

**J. Augusta** asked for confirmation of the age for the age-restriction, and **R. Clarke** responded age 55 and older. He said that there had been some discussion (at the October 2023 ZBA meeting) about the minimum age of 55 may be too young because someone age 55 might have a child in High School, and would the Applicant consider increasing the age to 62. **Chairman DeLeire** asked if there would be restrictions about children who may visit on the weekends, and **R. Clarke's** response was that it was unknown what those type of restrictions, if any, would be.

**Chairman DeLeire** commented about the parking stating that the proposal is for 1.7 parking spaces per unit, and is not 2, so anyone having two cars will have a challenge not including any visitors. He asked if there is any overflow parking area to accommodate visitors? **R. Clarke**



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stated that the parking spaces are not proposed to be assigned. He elaborated that there is proposed 20 one-bedroom units = 20 cars, plus 68 two-bedroom units (68 x 2 cars) = 136 cars, so 136+20=156 cars, and the Applicant is proposing 150 parking spaces. He clarified that that is not typically how parking needs are calculated, that more typically parking ratios are calculated using the range of 1.5 to 1.8 parking spaces per unit for age-restricted housing use. **Chairman DeLeire** asked about the assumptions made regarding one car-per-one-bedroom because if there was a couple in the one-bedroom, then there could conceivably be two cars for the one-bedrooms, and not one car. **J. Augusta** asked if there is a requirement for parking spaces at all? He stated that plenty of places do not have parking such as Portsmouth, Beacon Hill, that are more urban locations. There are things such as Door Dash and Uber that can facilitate not having a car. He asked if the 1.7 parking ratio is per unit, or, is it the average, and can it be mixed-up and flexible in application to the different size units, so that some units may have zero, and other units may have four?

**Mark Sikorski** said that he has been reading design standards for other (more urban) areas regarding parking. He continued, saying that what is important to focus on with this application is the limitation of the wetland in terms of the limited area to build on and what the applicant can provide. The challenge is trying to find the balance between the total number of units and the number of available parking spaces, such as (hypothetically) what would need to change on the site to allow two (2) parking spaces per unit? M. Sikorski reviewed a clarification made earlier in the presentation that the housing units are going to be condominiums and not apartments, so it would be important to know if parking spaces would be assigned or “purchased” as part of the Purchase and Sales Agreement. After purchase, would the parking be managed by an on-site (external) management company, or self-managed by an (internal) HOA (Home Owners Association) because “how do you tell people six-months after move-in, when they, or their guests, continually don’t have a place to park that you can provide them parking?” **M. Sikorski** continued that one of the dangerous things about a plan like this is trying to solve those issues before the ZBA goes down the path to approval. How to manage what may be a shortfall, or what may not be? M. Sikorski responded to the Applicant’s comments/comparisons to the Meadows/Avesta and said that The Meadows is a completely different situation because it is more severely age restrictive, and they have additional space to construct more parking but they were given relief to not have to build their overflow/extra parking at the time of the construction of the housing units. What the town is finding now, however, is that there are issues with available parking at The Meadows. He stated that, in his opinion, “this is the elephant in the room”. M. Sikorski wondered if it would not be more advantageous to create a better balance of housing units to parking spaces early in the process, rather than settling on the number of housing units, and then secondarily figure out where everyone is going to park. **J. Augusta** stated that it is a matter of managing expectations and stated that often in condo documents the number of parking spaces will be stated as included, and may or may not be assigned, and then sometimes people can pay more to purchase additional parking spaces if desired/available.

**Chairman DeLeire** said the comparison to The Meadows is not fair because The Meadows is low-income elderly housing, and these proposed units would list for \$550,000-\$650,000 each. The buyers of the new condos would be self-selected and would know the parking limitations of the site going into their purchase. **Chairman DeLeire** stated that it would be difficult to imagine that buyers would be limited having visitors due to lack of parking. **R. Clarke** responded that the

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Applicant could add twenty (20) parking spaces to the central courtyard area, that would bring the site total to 170 parking spaces.

**J. Augusta** asked about the concern of run-off of impervious areas from parking, and asked if gravel could be used instead, for example for guest parking? He asked what qualifies as a parking spot? **M. Sikorski** stated that he thought the Applicant was generous with their parking dimensions, and that they exceeded the typical minimum dimensions. **J. Augusta** asked if the Applicant could expand their parking into the wetland buffer area by establishing a gravel parking area for visitor parking? **M. Sikorski** responded that it would be a rarity to design a parking lot in a wetland area. If residents saw that as an option, it would need to be closely controlled with borders of the wetland areas identified with wetland placards that would not allow any disturbance beyond a certain area.

**R. Clarke** asked **M. Sikorski** if the ZBA has ever reduced the size of parking spaces, and stated that the current size is 10' x 20'? He said that most often they design/provide 9' x 18' size parking spaces. He stated that if he were to squeeze the proposed parking space dimension down to 9-feet wide, then every tenth (10<sup>th</sup>) space they would gain one (1) space, and the overall site would gain ten (10) additional parking spaces as a result, by re-striping the parking. **M. Sikorski** said that he would need to do some research in engineering guides to ascertain if there is a minimum parking space size, and if feasible, the Applicant would need to request a Waiver from the Planning Board for parking space width. **Chairman DeLeire** stated that sometimes there are specified parking spaces for compact cars. **R. Clarke** responded that compact cars are 8' x 16' so they would gain two-feet (2') width by locating those. **Chairman DeLeire** said that adding ten (10) more spaces by providing some compact car spaces would bring the total up to 180 parking spaces. **M. Sikorski** said that another consideration would be to locate some EV charging stations on site. **R. Clarke** said that some sites require parking spots for a rental car.

**M. LaBarre** asked about the topography of the site and the wetlands, and the extent of the slope on-site. **R. Clarke** responded that the elevation at the front door is 32ft and the site drops down to elevation 20ft at the northern wetland area along Route 1, for a grade change of 12-feet, and there is a wall proposed to keep activity out of the wetland. **M. Sikorski** asked if there was a pool area on the site, and **R. Clarke** responded that there is a pool area proposed for the southwest area of the site. **M. Sikorski** asked if there was a pedestrian passage around the back of the front building, and **R. Clarke** said that there is not one shown, but it could be added for pedestrian access all the way around the building.

**M. LaBarre** asked that if this project is approved by ZBA, the Applicant would need to go through the NH DES? **R. Clarke** stated that the Applicant would need to file an Alteration of Terrain permit (AoT) with the NH DES AoT Bureau, a curb cut with NH DOT, and then get Planning Board approval. **S. MacLeod** clarified that the NHDOT curb-cut review also includes a Traffic Study. Additionally, he proposed the Applicant consider removing the pool and replacing it with compact car parking, and **R. Clarke** said he might reach 190 parking spaces with that replacement. **S. MacLeod** referenced the Applicant's use of the 1.7 parking standard, and questioned the source of that standard, whether it was a state or national standard? **R. Clarke**

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said that Allen & Major designs multi-family residential housing in four (4) states and that typically those developments are in the 1.5 to 1.8 parking ratio. **S. MacLeod** asked about the size (square footage) of the housing units, and **R. Clarke** responded that the two-bedrooms would be 1,200 sqft, and the one-bedrooms would be 900 sqft. **J. Augusta** asked what the parking ratios would be on 190 and on 180 parking spaces? (190  $\div$  88=2.159)

<u>Prkg Spaces</u>	<u># of Housing units</u>	<u>Parking ratio per housing unit (not per bedroom)</u>	<u>Notes re plan revision to accommodate additional parking</u>
200	88	2.272	Consider replacing pool with 10 spaces, taking count from 190-200 spaces.
190	88	2.159	Convert some parking spaces to compact cars to gain 10 spaces, taking count from 180-190 spaces.
180	88	2.045	Parking waiver from 10ft to 9ft width gains 10 spaces, taking count from 170 to 180 spaces.
170	88	1.931	Add parking within the courtyard entrance to gain 20 spaces, taking current count of 150 to 170 spaces.
150	88	1.704	Current proposal of 150 parking spaces

**J. Manna** asked about utility connections, any natural gas or propane? **R. Clarke** said that he was not sure if there was gas in the road or not, but the Applicant would have some options. **M. Sikorski** stated that he knows that there is gas available on the perimeters of Seabrook. He commented that propane would require considerable area to store the propane tanks on-site, and he was not sure there would be enough space to accommodate the demand. He said that either the gas company would lay the pipe at the same time as the sewer installation in the road, or go across properties with easements. There was a discussion about various heating options and scenarios.

Chairman DeLeire opened the Public Hearing for **Public Comment.**

- 1) **Carol Schutte, Exeter Road.** Asked for help with the assumptions made regarding estimating the tax revenue. **Stephen Mayer** responded that he took the average estimated value of each unit at \$400,000 and multiplied it by the tax rate. **C. Schutte** followed up asking about the condominium's common area, and **S. Mayer** responded that he did not take the common area into consideration. **S. MacLeod** stated that because there will be condo units, there also is common area on the site that is valued, and each owner pays a proportional share of that common area value in their taxes as well. He stated that the Town just went through a 2023 complete revaluation of assessments to 99.9% (with a five-star rating), so it would be important to get that projected tax revenue number

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qualified, as Chairman DeLeire requested in his comments earlier. He asked if the ZBA could ask the Town Assessor, Mr. Chad Roberge, for a projected valuation of anticipated taxes, and **Chairman DeLeire** said that he is keeping a list of items for follow-up that the ZBA may request for additional information.

**C. Schutte** commented that she serves on the Energy Committee for the Town and is thinking 20-30 years into the future. Following-up on the comment about EV chargers for the parking lot, she said that the Applicant might think they need a certain number of EV chargers today, but many more people will be driving EV cars in the future. She continued that it is a lot easier to upgrade an EV-ready parking lot, than it is to retrofit it. She said that Hampton Falls does not have requirements for EV Chargers, but she wanted to convey the idea to potentially save money in the future by installing the infrastructure now. Lastly, **C. Schutte** asked for clarification that the mixed-use restaurant component is no longer a part of the proposal, and **R. Clarke** confirmed. He continued that deleting the restaurant reduced the parking requirement, and reduced the trips per day, and reduced the complexity of the proposal, and **Chairman DeLeire** agreed with the Applicant.

2) **Mark Lane, Blakes Lane.** **M. Lane** stated that he owns a two-bedroom condominium unit in a large 96-unit condo development in Exeter and they all have one assigned parking spot to each unit. He said that there is additional parking, but each unit has one parking spot assigned. **M. Lane** reiterated that the Town completed a revaluation last year in 2023 at 99%. He disclosed that his wife is a realtor and has told him that sale prices in Hampton Falls are already exceeding the revaluation (new) assessed values from last year by up to 17%. He said that there is a lot of demand to live in Hampton Falls, and he anticipates that there will be demand to live in the proposed development. He stated that from a tax revenue standpoint and in speaking with Joe Faro personally, that these units are going to be quality, high-end residences, and there will be significant tax relief for the town.

**M. Lane** provided some personal background, and shared that he has lived in town for thirty (30) years and has been on boards and committees for eleven (11) of those years, namely the Select Board and the School Board. He said that one over-arching question has always been, how do we make Route 1 look like the rest of Hampton Falls? The other is how do we give relief to the residents in town on the tax side? The answers to those questions have always been tied together because the reality is that without sewer and water it is hard to increase the value of properties on Route 1. He continued that he has had numerous conversations with people over the years on this subject, including Todd Santora (Planning Board Chairman). He said that now, for the first time in thirty years, there is a potential opportunity at the table that is going to finally allow the Town to potentially bridge that gap. **M. Lane** said that for someone with the reputation that the Faro family has, for building high-end, quality product can come to Hampton Falls and “get that ball rolling” for the town. He stated that the result could change the landscape of Route 1, that has been on the mind of so many residents for years. Assuming that the project gets approved, and assuming that water and sewer get extended to the site, the project will become the “*standard bearer*” for the way that future growth on Route 1 would look like. On top of that, there is still the question of water and sewer north of 12 Lafayette Rd., but at least it is there. This is the

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opportunity to approve the project and to improve property values. He challenged people to envision Dodge's Pond without the Mattress building and the blue t-shirt sales place in years to come. The burden of taxes on the residents could be reduced by the potential of the redevelopment of Route 1. By this project specifically, the tax burden on residents could be reduced by 10-15%.

**Chairman DeLeire** commented on a few points and said that he wanted to make it clear that he wants to see something happen on the site. Additionally, he said that the difference between the (October 2023) ZBA meeting and this one has gone a great distance, and he is appreciative of that. He asked M. Lane if there was a difference in the taxes as a result of The Meadows/ Avesta being built (it is 72 units). **M. Lane** responded that it is a very different situation as The Meadows are low-income, rental, elderly, subsidized apartments. **Chairman DeLeire** made a second point that the ZBA has to consider this particular development proposal that is seeking relief and to balance that against the taxpayers of Hampton Falls, who voted in the Zoning Ordinance regulations. The ZBA is being asked to over-rule a number of regulations that the ZBA did not make, but which the ZBA needs to adhere to. He stated that there is a certain balance on which relief can be granted, and then there is a certain point on that balance that goes beyond what the ZBA should do without the residents of the Town, who pay taxes, voting on it. He said that the ZBA needs to balance that as well, and they cannot just arbitrarily decide what they think is good for the town because the balance of the residents in town may not think it is a good idea for the town. He said that there is a duty of the ZBA to have the responsibility to balance all of these issues.

**M. Lane** responded saying that he is speaking from 30-years being in town and 11-years being on boards and listening to people ask him (1) how to reduce taxes, and (2) how to get water and sewer up Route 1 to improve the Route 1 corridor so that it looks like the rest of Hampton Falls. **M. Lane** said that the one thing that the Selectmen cannot change every year is escalating costs, and the one thing the Selectmen can do is to figure out how to spread that cost amongst parcels of land in town that are not adding to the taxbase. He said that this parcel has been vacant for 10 years and this is an opportunity for the town to receive tax revenues in a range from \$250,000 to \$500,000 annually as a result of this project. He encouraged everyone to go to Salem NH and to see Tuscan Village to see a sample of Joe Faro's son's work.

**Patti Young** said that the people who buy the condos will become new residents so it is a shifting of the tax burden among residents. **M. Lane** agreed, that it is not like commercial development; however, the residents of the proposed age-restricted development will not put a drain on town services because there will be no school children, and there will be an HOA or management company to privately contract for trash/recycling and plowing onsite, so the additional potential \$400,000 of annual tax revenue will offset the town's 4-million-dollar budget by ten-percent (10%). M. Lane summarized his dream that if this can happen, it sets the stage for improving property after property all the way up Route 1.

3)**Paul Lepere, Lafayette Rd.** **P. Lepere** stated that in terms of taxes, any real estate transaction of \$500,000-\$600,000 is going to be a tax revenue of \$12,000 minimum annually paid in real estate taxes, multiplied times 88-units, that is closer to one-million dollars (\$1,000,000) in annual

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tax revenue. He posed the hypothetical question, if this application is denied, then who else is going to come along and improve Route 1? He said that he has been in town for 40 years and has heard discussion of sewerage coming to Hampton Falls for 40 years. He said that the Applicant has adjusted their proposal from 132-units to 88-units and he sees that as an expression of the Applicant wanting to work with the town, and he encouraged the communication to continue to tweak the proposal, instead of rejecting it.

4) **Bobby Hudson**, Deputy Fire Chief. **B. Hudson** asked if there was an agreement with Seabrook to increase the water main size to supply water suppression for those proposed buildings? If not, is the Applicant planning to put large enough wells on the property to feed the water necessity plus the fire suppression? **R. Clarke** responded that the big issue is the sewer, and the water line is already there, the applicant would need to upgrade the water line. **B. Hudson** asked if there was anything in the HOA documents to prevent purchase of the condos and using them as Airbnbs? **R. Clarke** stated that the Applicant would not be opposed to adding that as a Condition of Approval if the ZBA asked for it, as it is not the owner's intent to turn the property into rental units.

5) **Mark Lane**, Blakes Lane. **M. Lane** said that what he likes about the proposed project is the reputation of the person behind the project. He said that if the proposal is denied, then what is next? Who knows what would be proposed on the site after Mr. Faro sells the property?

6) **Abbie Tonry**, Exeter Rd. **A. Tonry** said that she had six points to make. (1) The definition of age-restricted housing, according to HUD, is that only one of the occupants needs to meet the age requirement. (2) The potential revenue from real estate taxes has been discussed, but there has been no discussion of the amount of costs those additional 160 +/- people would cause. (3) **A. Tonry** stated that the proposed building is a lovely building, but is this what Hampton Falls wants all the way up Route 1, or do people want/like the diversity of different types of businesses and buildings? If sewer comes in, then there will be more commercial activity and not strictly residential. (4) When the Planning Board added the Multi-Use zoning, they expected multi-use and not all residential; they expected commercial on the ground floor with a few residential units above, not 88 units. (5) A. Tonry restated words Joe Faro said at a prior meeting where he said that *"he hopes the development looks like Miami Beach"*. A. Tonry asked if this is what Hampton Falls wants? (6) If most Hampton Falls residents live on a two-acre lot, and this proposed project is down to one-acre of buildable land. She challenged residents to imagine their two-acre lot cut in half, and then added 88 housing units to it, and imagine what that does to the look of Hampton Falls.

**Chairman DeLeire** closed the Public Comment portion of the Public Hearing and opened it up for discussion among the ZBA members.

**Chairman DeLeire** stated that he likes that the proposal has changed dramatically, and that shows a cooperative interest to do something there, but he stated that he has a number of questions. He continued, that unless someone has a Motion, that the ZBA may need to pose the following questions and wait to get some answers.



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- 1) The sewer agreement with the Town of Seabrook, would like to see that in writing, specifically what the developer is going to be responsible for and what the Town is going to be responsible for, and how the maintenance of the sewer line is going to continue and to not become a burden for the Town of Hampton Falls.
- 2) Same type of question for water service to the site, namely identify the responsibilities of each party for installation costs for an upgrade in size of the water line and ongoing maintenance. Is water going to be provided from Seabrook, or from a well?
- 3) Description of the tax revenues anticipated from the development, and what might the costs to the Town be as a result of the development.
- 4) What are the services that will be necessary to support the development in terms of Police, Fire, Trash, Recycling, and Plowing and will some of those be handled by the HOA?
- 5) Who is going to manage the development after all the condos are sold off? He said that sometimes the property management is delegated to a few Condo Trustees, who are residents, and then those people make the decisions about age restrictions, rentals or Airbnbs, etc. Sometimes condos turn into rental units, and if there are too many rental units then banks do not agree to finance them if the “owner to renter occupancy rate” is too high.
- 6) He said that he knows the Traffic Study comes later, but it would be nice to have some information as to what the likely activity is going to be if there are going to be 190 parking spots.
- 7) EV Chargers was a good point that was raised, and although there is no mandate currently there may be a question of whether there is enough power for EV Chargers in the future.
- 8) Clarification on age-restricted, or, elderly housing. What is the intention, is it one or the other or both, and, are the definitions going to be part of the condominium documents?
- 9) **J. Augusta** said that he would like to see a Revised Parking Plan either with or without the pool, whichever works to their favor. **S. MacLeod** requested the revised parking numbers presented in a matrix format showing the various options/alternates such as with or without pool, driveway/courtyard, etc.

**R. Clarke** asked the ZBA what the flavor of the board is for the parking ratio, is the ZBA looking for a 2.0 parking ratio? He said that if he knew the answer to that question then he could plan for it and work with that fact. **Chairman DeLeire** said that it would be one factor in addition to these other questions. He said that he was repeating himself but said that he would like to see something go there, and he said that he felt as though they were getting closer to what it is. He said that he felt that getting some of these questions answered would help the ZBA (or at least himself) get to that point.

**M. Lane** asked Chairman DeLeire if he could ask a question, and **Chairman DeLeire** agreed. **M. Lane** stated that he appreciated all the questions being asked, but asked if these questions were more like Planning Board questions? **Chairman DeLeire** said that he did not disagree with him but felt that the ZBA has a duty to the residents who may be opposed to this, and there is a zoning regulation that the ZBA is going to try to follow and if the ZBA is going to bend those rules and allow this project to happen that any of this information, even if it sounds like it goes

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beyond what the ZBA's purview is, is helpful (at least for him) to make a decision that is in the best interests of the town. He said that he appreciates what M. Lane is saying and that often the ZBA does have questions that fall outside of what the ZBA may typically look at, but in the end all these things add up to whether or not the proposal fits the five (5) criteria for a variance.

**S. MacLeod** received clarification from Todd Santora, Planning Board Chairman, that the Applicant had been to the Planning Board previously in 2022 for Design Review before they went to the ZBA in October 2023. He asked if the 2.5 parking requirement was a zoning requirement, and **T. Santora** responded that that is a legitimate question.

**J. Augusta** commented on Chairman DeLeire's statements about the duty of the ZBA to the residents, and how difficult it is because it is an impression and it is an aesthetic question. He could argue either way that the proposed project is an overbearing monstrosity or that it is a beautiful Chamelot, but when he compares either scenario to what is there now it is a junkyard or a lunar site. **Chairman DeLeire** agreed with J. Augusta and said that that is why the ZBA is continuing to entertain this proposal and why the ZBA is looking for additional answers so that they can try to move this along in a positive manner. He continued, saying that where they were in October 2023 was insurmountable, but where they are now, they are getting to a point where some of the things seem reasonable.

**P. Young** stated that the water and sewer answers to the questions do make a difference because if the Applicant cannot get those utilities from Seabrook, then they would have to locate them on their property. **R. Clarke** said that if the water was not granted from Seabrook, then the Applicant would need to create an underground cistern or create a fire pond, but the intent of the Applicant is to get the water from the municipality because it would be easier. **M. Sikorski** stated that this property has a distinct advantage because of the proximity to those utilities, and it is an opportunity not to be missed. He continued, saying that his concern is that there is another property owner located to the north of 12 Lafayette that is poised to do the exact same thing, but the question is whether that individual would be willing to extend the sewer to their property at their expense?

**M. LaBarre** asked for clarification about the utilities and whether the Applicant plans to use gas or electric for heating and/or cooking.

**J. Augusta** asked why the restaurant component of the plan was scrapped, because there is a huge appetite in Hampton Falls for dining since there are only a handful of places. **M. Clarke** responded that the formerly proposed restaurant was only 6,000 sqft and had parking requirements (1 per 3 seats), added trip generation to the site, and proposed to fill wetlands; so, the Applicant decided that they were trying to load too much onto the site and that removing the restaurant proposal deleted one of the variance requests.

**MOTION: To Continue Case# 24-03 to the Zoning Board of Adjustment meeting on April 25, 2024, at 7:00 PM at the Hampton Falls Town Hall 1 Drinkwater Road.**

**MOTION: J. DELEIRE**

**SECOND: M. LABARRE**

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**D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 02/22/2024**

**MOTION:** To approve the meeting minutes from 02/22/2024 as written.

**MOTION:** J. DELEIRE

**SECOND:** J. MANNA

UNANIMOUS

**E. OTHER BUSINESS:**

REORGANIZATION OF THE BOARD:

- 1) **Nomination and Election of Chairman:** P. Young nominated J. DeLeire as Chairman.

**MOTION:** To appoint John DeLeire as Chairman of the ZBA with term expiring March 2025.

**MOTION:** P. YOUNG

**SECOND:** J. AUGUSTA

UNANIMOUS

- 2) **Nomination and Election of Vice-Chairman:** J. DeLeire nominated Steve Bryant as Vice-Chairman.

**MOTION:** To appoint Steve Bryant as Vice-Chairman of the ZBA with term expiring March 2025.

**MOTION:** J. DELEIRE

**SECOND:** J. AUGUSTA

UNANIMOUS

**F. COMMUNICATIONS TO BOARD MEMBERS:**

2024 Zoning Board of Adjustment members' Listing, confirmed contact information.

**G. ADJOURN:**

**MOTION:** To adjourn the Zoning Board of Adjustment at 9:20 PM.

**MOTION:** J. DELEIRE

**SECOND:** J. MANNA

UNANIMOUS

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, April 25, 2024, at 7:00 PM at Hampton Falls Town Hall.

Zoning Board of Adjustment Minutes prepared by Rachel D. Webb, Assistant Administrator.