

ZONING BOARD OF ADJUSTMENT	October 26, 2023 7:00 PM
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A. CALL TO ORDER:

J. DeLeire, Chairman, called the meeting to order at 7:00 PM.

B. ROLL CALL:

3 MEMBERS and 5 ALTERNATES PRESENT: John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Mark Call, Member; Alex Dittami, Alternate; Weezie Vance, Alternate; Jamie Hasenfus, Alternate; Patti Young, Alternate; Jude Augusta, Alternate.

1 ABSENT: James Manna, Member

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

GUESTS: Charlie Leto and Frank Perry; Attorney John Bosen; Joe Faro; Robert Clark and Steve Mayer of Allen Majors engineers; and Rina Cook and Eric Anderson of Pro Con Construction architects.

Chairman DeLeire stated that there were three (3) ZBA members and five (5) alternates present. The five (5) voting members for the meeting were: J. DeLeire, S. Bryant, M. Call, A. Dittami, and J. Augusta. For the first Public Hearing M. Call recused himself, and W. Vance was appointed to serve in place of M. Call for that hearing Case #23-09. Chairman DeLeire clarified that the additional Alternates could participate in the discussion of the meeting up to, but not including, the vote.

J. Augusta disclosed that he had met F. Perry (the applicant for Case 23-09) once or twice, but that he did not know him well.

P. Young disclosed that F. Perry (the applicant for Case 23-09) used to be a member of the ZBA.

C. PUBLIC HEARING:

I.) Case # 23-09: Application from **Frank Perry**, for a Variance from the Hampton Falls Zoning Ordinance to the terms of: Art. III, Sec. 7.7.1 from the required fifty-ft (50') setback from all lot lines; Art. III, Sec. 8.5.1.2 setback from the one-hundred-ft (100') Prime Wetland buffer setback (RSA 482-A); Art. III, Sec. 8.5.2 setback and buffer requirements for wetlands and surface waters; and from the Building Code, Art. 7.1.1.1.a natural soil depth of four feet (minimum) to bedrock for Septic Reserve Area (SRA); Building Code, Art. 7.1.1.1.f encroachment by the SRA upon the protective well radius; and asks that said terms be waived to permit the construction of a 2,233 sq. ft home. Existing horse barn to remain as detached structure, at property located at **63 Drinkwater Rd, Map 4, Lot 70-2, in Zone A/R, Agricultural Residential.**

Charlie Leto introduced himself as the owner of the lot under discussion. He stated that the lot was created by subdivision in the late 1970s. He continued that he and his (then) wife purchased

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the house at 65 Drinkwater Road in 1994/1995. He said that the lot next to the house was advertised for sale as a buildable lot, and he asked for proof of the fact that it was buildable when he bought the lot and he was given an approved septic design plan that had been approved by Rockingham County Conservation District (RCCD). His intention with the lot was to build a house for his widowed mother. He said that at some point, someone added a note on the Assessor card that the lot is not a buildable lot, and he has no idea who did that or when, or why.

W. Vance asked who put the note on the Assessor’s Card, and J. DeLeire said that no one knew, it was probably an Assessor for the Town years ago. R. Webb said that she emailed the Assessor, Chad Roberge of Avitar Associates, to ask about the notation on the card, and the current Assessor responded, *“I cannot unfortunately tell you when the note was added. I looked back to 2019 and it was still present then.”* Chairman DeLeire stated that it is unknown where the note came from with the information available.

F. Perry said that he retired some years ago and moved to a condominium and discovered he did not like living in a condo, so he and his wife were looking to move back to Hampton Falls. He knew Charlie Leto and the two put a transaction together that resulted in F. Perry before the ZBA regarding the lot. He shared an architect’s elevation drawing of the front of the proposed (single-story, 3 bedroom, 2 bath) house he wants to build on the lot. F. Perry showed a plan of the 98,000-square-foot lot that depicted the buildable area of the lot outlined and stated the buildable area is 6,000-square-feet without relief. Further, he added that if the zoning for the wetlands setbacks was not approved in 1988, that he would not need to come before the ZBA for any relief. F. Perry said that there is an existing building on the lot that is a barn, that consumes most of the 6,000-square-feet of buildable area when a septic and a septic reserve area and a well are factored into that buildable area. F. Perry stated that the rear of the proposed house will be approximately eighty-feet (80’) to the stream near the rear property line. He additionally stated that the proposed location of the house is approximately twelve-feet (12’) higher than the stream in the back. He explained that he believes the lot was leveled out for the purpose of developing a paddock area for horses. F. Perry stated that due to the topography of the area along Drinkwater Road, and because of a berm and stone wall and trees along the road that it will be hard to see the proposed house from the street.

W. Vance asked if the barn is used for animals as it looks more like a garage. And F. Perry said that when C. Leto purchased the property there was a dirt floor in the barn and two separate stalls in the barn, and C. Leto poured a concrete floor in the barn. He stated that he will use it as a garage, since his hobby is restoring vintage sports cars.

F. Perry stated that there is an encroachment on the side yard for the septic leach field to the property line a distance of thirty-feet (30’). He stated that the proposed septic system is an advanced enviro system septic that is one-third (1/3rd) the size of a conventional pipe and stone system.

F. Perry addressed the comment on the Assessor card that stated that the lot *“won’t perc”*, and refuted that claim as untrue, because the lot has perched on three (3) separate occasions, namely,

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once in 1993 when C. Leto initially bought the lot, then a second time in 2019 when C. Leto initially considered started investigating the potential development of the lot and Mike Cuomo (of RCCD) witnessed perc tests, and the third time was when F. Perry had it tested this year and he has a letter from M. Cuomo in regard to those perc tests.

F. Perry said that M. Cuomo’s objections are as follows: (1) There is no 5,000-square-foot septic reserve area (SRA). F. Perry stated that there is considerable SRA but it is located within the wetland setback buffer area. (2) The test pit fails the perc test because there is not four-feet (4’) of natural soil. F. Perry stated that the lot was filled at some point, and it is all sandy loam with no bedrock. Chairman DeLeire clarified that if the lot was not filled then the perc test would have passed. F. Perry said that the barn may have been built in the 1970s and that may be when the fill was put in. S. Bryant commented that at the September ZBA meeting the board had this exact same issue of old fill being in place causing a perc test to fail because of the requirement of four-feet (4’) of native soil, even decades after the fill was installed. He asked F. Perry if he knew when the fill was installed, and F. Perry’s response was that he believes it was in the 1970s when the barn was built because the barn was built on top of the fill.

Chairman DeLeire asked the applicant if the barn was removed, would that improve the situation, and would he still need all the relief seeking tonight? F. Perry responded that he would still need some of it because if the barn was taken down, the wetland setback and the front property setback make the buildable area very narrow. He stated that it would be hard to build a house that would conform. F. Perry stated that he does not want to take down the barn because it is in good shape with a concrete floor, insulation, electricity, and two garage doors, so it has everything that he needs. F. Perry stated that his intent was to center the proposed house over the buildable area for the lot, so as to minimally encroach on any one area.

Chairman DeLeire reviewed the types and dimensions of relief being sought by F. Perry.

- 1) In 7.7.1 there is a fifty-foot(50’) requirement, where thirty-five-feet (35’) is being requested;
- 2) In 8.5.1.2 and 8.5.2 there is a one-hundred-foot (100’) setback from the Prime Wetland buffer setback, where eighty-seven-feet (87’) is being requested;
- 3) In 7.1.1.1.a the natural soil depth requirement of four-feet (4’) was discussed previously; and,
- 4) In 7.1.1.1.f. encroachment by the SRA upon the protective well radius. F. Perry said that the engineer was able to locate the well within the buildable area, so that this item of relief is no longer needed. He stated that there still is the seventy-five-foot (75’) radius to the property lines, and there is more than one-hundred-feet (100’) from the septic leach field, he said that it is a very good placement of the well.

Chairman DeLeire requested the applicant go through the written application to present the material in terms of the five (5) criteria the ZBA evaluates for Variance requests for all of the relief requested combined, and not separately.

F. Perry presented his application for a Variance in terms of the five criteria.

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1) Explain how the variance will not be contrary to the public interest. The stated purpose of the HF Zoning Ordinance is, in part: *“for the purpose of promoting the health, safety, morals, prosperity, convenience, or general welfare, as well as efficiency in the process of development, of the inhabitants of the incorporated Town of Hampton Falls, New Hampshire, by securing safety from fires, panic and other dangers, providing adequate areas between buildings and various rights of ways, by preserving the rural charm now attached to our Town, the promotion of good civic design and arrangement...”* F. Perry believes that nothing in his request is contrary to or violates the stated goals of the zoning ordinance.

2) Explain how the spirit of the ordinance is observed. The Variance request is intended to allow reasonable use of the property in compliance with the stated goals of the HF Zoning Ordinance and is therefore in the spirit of the ordinance.

3) Explain how substantial justice is done. Without this Variance, the property cannot be used for the purpose for which it was originally intended due to the subsequent zoning provisions of the 100’ wetland setback dimension in 1988. This Variance request would retain a substantial setback from the wetland and boundaries of the property while allowing a residence to be built. In addition to the setback ordinance there is an existing barn on the property that must be factored into the placement of the residence. Every effort has been made to minimize the encroachment into the setback dimensions.

4) Explain how granting a Variance would not diminish the values of surrounding properties. To the contrary, F. Perry believes this Variance would allow the property to be used as intended in accordance with surrounding properties and actually increase property values.

5) Explain the special conditions that exist such that literal enforcement of the provision of the ordinance results in unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that owing to the special conditions of the property, that distinguish it from other properties in the area.

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and,

Because this property has a small stream, or drainage swale, bisecting the lot in half, the wetland setback begins in the center of the lot approximately and creates a boundary with only thirty-four (34’) from the frontline setback. If this was not the case, there would be no need for a Variance request. This is an unnecessary hardship because the actual wet area is topographically ten-feet (10’) to twelve-feet (12’) below grade level and over eighty-feet (80’) removed from the rear of the proposed residential structure to be built. All of the other properties surrounding this lot have very nice residential homes and this lot is unique with only a barn built in the 1970s that itself is today non-conforming under current setback dimensions.

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- (ii) The proposed use is a reasonable one.

There is no substantial relationship between the purpose of the dimensional setback requirements and the proposed residential construction. The purpose of this Variance application is completely reasonable when compared to all of the adjoining properties.

(B) If the criteria of subparagraph (A) are not established, an unnecessary hardship shall be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

F. Perry’s response was: Although he believes that he satisfies the criteria for establishing an unnecessary hardship as explained above, this property can be distinguished from other properties in the area by the fact that the location of the stream through its center creates an effective rear setback dimension that is so close to the front property setback that it renders the lot unbuildable.

A.Dittami asked F. Perry what year the Planning Board signed the plan for the subdivision that created the lot, and F. Perry responded 1979. A. Dittami disclosed that he has known C. Leto and were on the ZBA together for ten or twelve years as part of the first members. He continued that they knew a builder in common who asked A. Dittami to do a title search on the property. A. Dittami launched into a historical account of his deed research on the property regarding lots of record, and how there was formerly a boundary dispute with one of the side property lines. His overall point was that the lot was a “Lot of Record” prior to zoning ordinances that were enacted later with various setback requirements. A. Dittami referenced the Zoning Ordinance’s definition of a **“Lot of Record”**: *A distinct tract of land recorded in a legal deed or depicted on a plan filed in the Registry of Deeds.*

Public Comment: Chairman DeLeire asked if there was anyone who wanted to speak in favor or opposed to the proposed plan. There was no Public Comment. Chairman DeLeire closed the Public Comment.

A.Dittami stated that given the history of the lot, what F. Perry is asking for is within the jurisdiction of the ZBA and would be appropriate. He stated that the property was a Lot of Record long before any newer zoning ordinances were voted in by the residents.

S. Bryant addressed the special conditions of the lot and stated that the lot is unique due to the topography. He said that traveling west on Drinkwater Road it is going to be impossible to see the house, and traveling the opposite direction, someone would have to enter the property to be able to see the house.

A.Dittami reiterated that this was the second case in as many months to address the issue of the deficiency of four-feet (4’) of natural soil being cause to fail a perc test due to the presence of very old fill. He said that the engineer for the applicant at the meeting in September said that yes

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the fill can be delineated, but it (the fill) has been present for so long and, in that engineer’s opinion, was comprised of good draining soils for a septic system.

J. Augusta added that this request for a Variance seems very nominal, and he does not see a problem with the relief being sought by the applicant. He sees that the intent of the ordinance is being upheld.

MOTION: To approve Case # 23-09: Application from Frank Perry, for a Variance from the Hampton Falls Zoning Ordinance to the terms of: Art. III, Sec. 7.7.1 from the required fifty-ft (50’) setback from all lot lines; Art. III, Sec. 8.5.1.2 setback from the one-hundred-ft (100’) Prime Wetland buffer setback (RSA 482-A); Art. III, Sec. 8.5.2 setback and buffer requirements for wetlands and surface waters; and from the Building Code, Art. 7.1.1.1.a natural soil depth of four feet (minimum) to bedrock for Septic Reserve Area (SRA); and asks that said terms be waived at property located at 63 Drinkwater Rd, Map 4, Lot 70-2, in Zone A/R, Agricultural Residential, incorporating the five criteria the applicant presented, and, subject to the following Conditions of Approval:

MOTION: S. BRYANT

AMENDED: To include the elements of the Building Code, Art. 7.1.1.1 regarding the 5,000 square-foot Septic Reserve Area.

SECOND: J. AUGUSTA

UNANIMOUS

There was a brief break in between the two (2) ZBA cases.

Chairman DeLeire stated that the ZBA voting members for Case # 23-10 would be: J. DeLeire, S. Bryant, M. Call, A. Dittami, and W. Vance.

II.) Case # 23-10: Application from JTC NH LLC, for 8 Variances from the Hampton Falls Zoning Ordinance to the terms of:

- 1) Art. III, Sec. 4 – Table of Uses for Hampton Falls Zoning Districts, #8 Mixed-Use Development, to allow residential uses to exceed 40% of the first floor in a mixed-use development and to allow residential uses to face the street;
- 2) Art. III, Sec. 5 – Table of Dimensional Requirements, max. building height, to allow for the construction of a building up to 58-ft in height where 35-ft is allowed in the BDS district;
- 3) 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 58,000-sqft, where 25,000-sqft is allowed in the BDS district;
- 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 14.4% where 5% is allowed;

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- 5) Art. III, Sec. 11.4.5 max. allowable density for elderly housing development, to allow for 44.3 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 158 parking spaces where 330 are required. The required parking ratio is 2.5 spaces/dwelling-unit. The project requests a ratio of 1.2 spaces/dwelling-unit to be allowed;
- 7) Art. III, Sec. 11.5.3 max. number of bedrooms in an elderly housing building, to allow for 257 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 58,000-sqft where 10,000-sqft is allowed; and asks that said terms be waived to permit the construction of a mixed-use project that includes a 132-unit age-restricted multi-family development and approximately 6,000 sqft of retail space at property located at 12 Lafayette Road, Map 7, Lot 50 and Lot 51, in Zone BDS-Business District South.

Attorney John Bosen introduced himself as representing the applicant JTC NH LLC with a principal of Joe Faro (in attendance). He was accompanied by engineers Robert Clark and Steve Mayer of Allen Majors, and by architects Rina Cook and Eric Anderson of Pro Con Construction. J. Bowen stated that the proposal is for a mixed-use project that includes 132-age-restricted units and 6,000-square-feet of retail space. The property is located in the Business District South, and Elderly and Multi-Family Housing (EMFH) overlay zoning districts.

Chairman DeLeire stated that he is aware that the applicant has spent some time with the Planning Board, and the ZBA has had the opportunity to read those Minutes. He observed that as a result of going to Planning Board (PB) a couple of meetings it was apparent that the applicant was responsive to the PB's comments, made some decisions, and reduced and modified their original plan to reflect issues discussed. Chairman DeLeire stated that it appears the applicant acquiesced to the Planning Board, as to what the applicant's requirements might be, and yet the applicant is coming before the ZBA with specific requests, so he wondered what happened at the Planning Board, and why is the applicant asking for this type of relief. He wondered if it was an exercise to try to arrive at a certain number by starting out higher than what was discussed at the last PB meeting.

Robert Clark, with Allen & Major Associates stated that the applicant went to the PB two or three times, and also met with NH DES three times, in addition to the Conservation Commission. R. Clark stated that one of the major things with which the PB was concerned was the architecture and how the buildings were going to look, and what the feeling of the product was going to be. He said that at the time they met with the PB they did not have an architect on board and they do now, so that is going to be part of their presentation tonight.

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Chairman DeLeire stated that it was easy to notice the difference between what was discussed at PB and what is being proposed at ZBA tonight, as it seems as though the applicant has gone back to the beginning.

A.Dittami stated that 4 of the 8-variances requested on the ZBA agenda tonight were different from what was discussed at PB and it seems as if the applicant is trying to do an end-run around the PB. R. Clark clarified that it is not an end-run because the applicant cannot move forward with the PB unless they have approval for relief from the ZBA because there is specific hardship with the land. A. Dittami restated his question, why the applicant told the PB one thing and now is asking the ZBA for something else. M. Call referenced the PB Minutes and said, for example at the PB the applicant started with a proposed building height in the mid-50s, and then returned at a later date to the PB with a building height of 35-feet, and now this proposal with the ZBA is for 58-feet, M. Call said that he would be interested to know the genesis of that.

R. Clark oriented the ZBA to the site by referencing a plan of the two parcels on which the applicant is proposing their project. He stated that the site is comprised of a total of 11.5-acres of land. He said that there is a Prime Wetlands in the rear of the site, and that wetlands surround the site. He pointed out the dry area of land on the site, and a pocket or pool of water next to Lafayette Road that handles untreated stormwater run-off from Route 1. R. Clark said that they met with NH DES because the applicant was interested in locating the 6,000-sqft of retail in that area and were proposing some filling of the pool area, so NH DES told the applicant to go to the Conservation Commission, which they did. He continued that the buildable area of the site is 1.15-acres of the site when all the 100-foot wetland buffer areas are overlaid, rendering 90% of the site unusable.

R. Clark described that the applicant had originally proposed several buildings but now are proposing a single building with 3-stories in the front, and 4-stories in the back. He said that he understood that the PB had issues with the 4-story building and he said that the architect would describe the proposed building characteristics. R. Clark said that J. Bosen will be requesting the ZBA to vote separately on each of the Variance requests because at 1-acre of land being developable from 90% of the entire parcel, the hardship on the land is evident. Chairman DeLeire asked if all the Variances were necessary to have a workable project, and R. Clark responded that his client needs at least 100-units to have an economically viable project. He said that if the 4th-story were removed then there would be 104-units at 3-stories. He said that the parking ratio would be back to 2-per-unit instead of 1.2-per-unit. Chairman DeLeire asked if the 1-variance for height failed, then would the whole project fail, and R. Clark responded that they could propose a more reasonable approach with 3-stories and 104-units.

A.Dittami asked how many units could be developed on the property without any relief from the ZBA, and R. Clark responded there could be 16-units developed with a By-Right plan with no Variances on 11.5-acres. A.Dittami challenged the calculation and R. Clark said he would consult with S. Mayer and get back to him on that topic. S. Bryant asked how long the owner has owned the property, and R. Clark responded that it used to be Faro Restaurant that closed in the mid-1990s, so Joe Faro has owned the property for 30+-years.

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Eric Anderson, architect with Pro Con, introduced himself. He stated that the building was designed specific to the site, the town and the area. He said that he knew that the building height was going to be an issue, which was why the building was designed to step down the height towards Lafayette Road with 2-1/2 stories in the front and 4-stories in the back of the site in between the wetlands. E. Anderson stated that the Retail part of the building will be located in the North end of the site with 2-stories of residential units above. He said that the Retail portion is designed as a traditional storefront with some outdoor dining areas underneath a porch element. E. Anderson stated that the design of the building was crafted to be in compliance with the Hampton Falls (HF) Design Guidelines, and the inspiration architecturally was the Colonial style, that is a very popular coastal vernacular in this area. He described some of the architectural elements that create the Colonial style are 2-styles of roofs namely Gambrell and Gable, in addition to the use of Shed Dormers to break up the façade with different styles of roof. There is a traditional style railing above the porch, some bays and divided light windows that embody a traditional style of architecture. The vertical walls would be a combination of clapboard siding and cultured stone facades to continue with the traditional style of architecture. He described the entrance courtyard drop-off area as being approximately 180-ft back from Lafayette Rd, and at the entrance the building is proposed to be 4-stories in height.

Chairman DeLeire asked what the height of the tallest peak or point on the building is, and the response was 58-feet for the part of the building in the back of the site, and 42-feet high in the front part of the building closest to Lafayette Rd. so that the building steps down in height towards Lafayette Rd. E. Anderson explained that Retail requires a bit more height than residential, so that is why the proportions are a bit different on the part of the building that is Mixed-Use.

A.Dittami stated that there are 12-other multi-acre sites along Lafayette Rd in HF, and he said that if the ZBA approved this density on these lots, then the other lots would want to develop similarly and the Town would lose its rural charm and agricultural feel of the community that the Town wants to preserve. E. Anderson responded that he is not familiar with the other lots to which he (A. Dittami) was referring, but he said what was important to the applicant was maintaining a 2-1/2-story façade along Lafayette Rd. A. Dittami said that if all the multi-acre lots were developed at the density proposed, that it would look like (as described in the application) Miami where the individual buildings look beautiful on their own but when put together look like a city.

J. Bosen said that the ZBA needs to look at each project on its own and the applicant's project proposal. He stated that because of the unique aspects of the property the applicant felt that their proposal is the best product to bring forward. He said that the applicant does need some Variances but believes that the Variance criteria are met.

J. Bosen presented the 5 criteria the Variances must meet for approval, in terms of the proposed project.

1) Explain how the Variance will not be contrary to the public interest; and 2) Explain how the spirit of the ordinance is observed. J. Bosen stated that the tests for these 2 Variance criteria

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(evaluated together) are whether the Variance granted would substantially alter the characteristics of the neighborhood, and/or threaten the health, safety and welfare of the public. He stated that it is the intent of the BDS zoning district to provide for the redevelopment along the southern portion of the HF Route 1 Corridor in order to enhance the visual character of the gateway into HF from Seabrook. This parcel of land in its existing condition does nothing to promote that purpose. The applicant’s proposed project will greatly improve the visual characteristics of the gateway, and provide a large tax boost to the Town as a result of the finished product. J. Bosen stated that the architect’s renderings of the project depict a first-class project with lots of landscaping, and New England architecture style features. The project will also include many outdoor amenities and outdoor spaces such as sidewalks, and the applicant is also willing to provide walking paths towards the rear of the site, with input from the Conservation Commission. In summary, J. Bosen stated that the applicant believes that the Variance criteria are met with respect that there is no substantial alteration in the character of the neighborhood, nor threatening to the health, safety, and welfare of the public.

3) Explain how substantial justice is done. J. Bosen stated that the test for whether substantial justice is done by granting the Variance requires the Board to conduct a balancing test. He stated that if the hardship upon the owner outweighs any benefit to the general public in denying the Variance then substantial justice is done by granting the Variance. J. Bosen stated that once approved, the project will receive Water and Sewer from the Town of Seabrook.

Chairman DeLeire inquired if that is confirmed, and J. Bosen stated that it would be a Condition of Approval, and is something that the applicant has been working on. He stated that the project could not go forward without those approvals. A. Dittami confirmed that the applicant would also need approval from the Town of HF to connect to the systems. J. Bosen stated that with approvals for the Variances, the applicant would move forward to the Planning Board (PB) and work on the sewer and water extensions with the Town and the PB at that point. He stated that the first step is the approval of the Variances.

A.Dittami asked if there were any alternative systems that could be installed on the property, and J. Bosen responded that he did not think so given the limited acreage of the site. He stated that when they receive the Water and Sewer from the Town of Seabrook, as a Condition of Approval, during construction the applicant would provide sewer stubs for future tie-ins to the North, with coordination from the Town, which would be positive opportunities for other HF property owners, and would therefore be a public benefit.

J. Bosen stated that the age-restricted housing is an allowed use within the EMFH (Elderly Multi-Family Housing) overlay zoning district that underscores the need for this type of housing within HF. He stated that it would be an injustice to the applicant to deny the Variance as requested.

4)Explain how granting a Variance would not diminish the values of surrounding properties. J. Bosen stated that the project will be constructed to a very high standard, as a high-quality project, it will serve to transform this dormant parcel of land into a beautiful age-restricted

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property with high-quality features and nice landscaping. The project will generate over \$1,000,000 of tax revenue annually to the Town, while imposing very little demand on municipal services, given the age restrictions of the future residents. J. Bosen stated that there is a substantial buffer separating the proposed project from abutting properties. He said that the Retail and Residential uses are typically not offensive to abutters in terms of odor and noise. The Water and Sewer connections from the Town of Seabrook will also serve to increase the values of the surrounding properties.

5) Describe the special conditions that exist such that literal enforcement of the provision of the ordinance results in unnecessary hardship.

A) for purposes of this sub paragraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- i) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and;
- ii) the proposed use is a reasonable one..

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

J. Bosen stated that the parcel is 11.5 acres in size and approximately half of the property is flagged as wetlands, in addition to the setbacks for the wetlands and for the structures, the only remaining land to build is 1.15 acres, so essentially 90% of the site cannot be used in strict conformance with the Zoning Ordinance, so the hardship definition is met in this case.

J. Bosen stated that the use proposed is reasonable, it is a residential use which is allowed. He continued that a project of this quality requires a certain number of units, in order to sustain itself. He said that in his experience the density limitations of the number of residential units is typically linked to a septic requirement, but because this will be on Sewer, the applicant believes that it is reasonable (for the ZBA) to relax the density requirements of the Zoning Ordinance.

J. Bosen stated that the project requires a Variance from the minimum number of parking spaces required. The ordinance requires 2.5 parking spaces per dwelling, and the proposed project provides 1.2 spaces per dwelling, which the applicant believes is more in line with what they believe the parking demand for an age-restricted community really is. Ultimately, the available parking will dictate who decides to live there. He said that an older couple with two vehicles are not going to purchase a unit there, so the applicant believes that the issue will be self-regulating.

J. Bosen stated that for all reasons stated, the applicant believes that the Variance criteria are met if each Variance is evaluated separately. J. Bosen reiterated the applicant’s request that the ZBA vote on each requested Variance.

Chairman DeLeire said that he did not envy the applicant’s challenge to overcome the 5 criteria of the Variance because all 5 criteria must be met, and if only 1 fails then the whole thing fails.

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He stated that what the applicant is asking for is incredible, and is over and above anything he would have imagined.

P. Young stated that she was just at the Avesta elderly housing in HF and noticed how parking is an issue there. She said that when that project was approved that she was opposed to the request for the reduction of parking, and that for that same reason she is opposed to the request for the reduction of parking with this proposed project. M. Call asked what was the parking ratio approved at Avesta, and M. Sikorski described how Avesta had a satellite parking lot approved for overflow parking that was located around their septic system. He described that over time the residents identified parking spaces per unit, but visitors were still parking in residents' spaces because who is enforcing the problem?

P. Young followed-up her earlier comment saying that this project is going to be Mixed-Use with Retail space in addition to the Residential, and she does not think that there will be enough parking with 2-spaces-per-unit. She said she is opposed to the project because of the proposed parking.

J. Bosen stated that there is a huge shortage of housing in the State, and at some point all municipalities have to choose between housing and parking, and that somewhere there is a balance, and he stated that he thinks that housing is more important than surface parking for vehicles. Chairman DeLeire asked where are the residents going to put their vehicles, and J. Bosen said that it will be self-regulating.

Chairman DeLeire said that he felt as though the applicant has a certain benchmark and that he did not feel as though that benchmark was what the applicant presented tonight. He said that the applicant was at the PB and made certain representations there, and tonight the applicant was asking for everything to determine the appetite of the ZBA. Chairman DeLeire asked the applicant what they really need. He stated that the ZBA is not in the business of changing what an applicant has asked for in their application. Chairman DeLeire stated that it was his opinion that what was presented tonight is not really what the applicant needs, or they would not have changed their request from what was previously discussed with the PB. He requested that the applicant be honest with the ZBA in terms of what makes the application a viable project. He said that the applicant has asked the ZBA to vote individually on all 8 Variance requests. He said that sometimes (with other applications of multiple variance requests) there is some "wiggle room" within some of the Variance requests, but if he were asked to vote on the current application that he would vote to deny all of them because they are all interconnected and are so far above the Zoning Ordinance that the residents adopted, that he could not know how to justify it to the residents, albeit the need for housing, to go to this extent.

A. Dittami asked if the stated conditions are unique to the lot, and R. Clark responded yes, due to being surrounded by wetlands, in addition to applying the 100-ft wetland buffer zone, there is left 1.15 acres. A. Dittami asked what the applicant did to determine that the lot was unique compared with all other lots in HF. R. Clark referenced the prior case on the ZBA's agenda tonight, and asked how many other houses could be built in HF today applying the 100-ft

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wetland setback buffer, he stated that the ZBA answered that question in the previous application. A. Dittami asked how long the lot has been in existence, and R. Clark asked Joe Faro who responded at least 30-years, and it was determined that the lot predates the ordinance.

S. Bryant stated that the point is that in HF almost every lot is encumbered with wetlands, so the property is not really unique. He identified the 2-lots across the street are also encumbered by wetlands.

R. Clark went through the calculations for the hypothetical build-out of the lot By Right, with no ZBA relief granted, for comparison purposes, and determined that 16 units could be built; then with wetland relief could build between 23-30 units at the 2.5 parking ratio but still would need relief from wetlands. Chairman DeLeire confirmed the applicant’s statement earlier that 100-units are required to make the proposed project viable, and R. Clark said that a reasonable approach would be to remove the 4th-story which was where they were going after the last PB meeting, but the applicant felt that if they had to get ZBA relief why not get the most relief possible. R. Clark said that if he removed the 4th-story that would be 104-units at a parking ratio of 2-parking spaces per 1-residential unit. He stated that this was where he thought he was going to be at the end of the PB process, but the applicant wanted to propose a higher density.

A.Dittami discussed the purpose of the Zoning in Article 1... *“preserving the rural charm now attached to our Town , the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provisions of public utilities ... now therefore the following ordinance is hereby enacted by the voters of the Town of Hampton Falls, New Hampshire in official meeting convened.”* He said the most important part of that statement of purpose and authority of the Zoning Ordinance is the latter part of the quote, as it implies that the zoning has been vetted through the Planning Board and through Town Meeting and the Town voted on it and decided to increase the density in this area of Lafayette Rd. A. Dittami asked the applicant what they could address regarding the purpose of the Town’s zoning in relation to the proposed project that would cause the ZBA to override what the voters have intended in the Zoning Ordinance.

J. Bosen stated that when a Town enacts a Zoning Ordinance it is for the greater community at large, but when looking at a specific lot that has hardship, such as 12 Lafayette Rd., the ZBA looks at each individual application on its face, and whether the request before the ZBA meets the criteria to grant the Variance. He stated that the Variance exists to alter the Zoning Ordinance if the criteria are met, and the applicant believes that the criteria are met with this application.

Chairman DeLeire asked if the applicant was able to do anything else on the property besides what is being proposed, because typically the hardship is granted by showing that what is allowed By Right is not possible nor reasonable to do, and that relief is needed. J. Bosen responded that the Variance criteria are whether there is unique hardship with the land on the parcel that prevents it from being used in the way that it was intended. He stated that the intent with the Elderly Housing Overlay district is to promote elderly housing. He said that now there is a dormant piece of land that is not providing any public benefit, but bringing Water and Sewer

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and building a beautiful project and adding to the HF tax base, and building something that meets the design elements of the Town, he stated that he sees that as being a good public benefit for the town, so he sees that as a balancing act.

P. Young asked what is the size of the 2-bedroom unit, and what is the size of the 1-bedroom unit, and the architect E. Anderson responded that the units have not been designed yet but would be approximately 1,400 to 1,600 sqft per 2-bedroom unit, and 1,000-sqft per 1-bedroom unit. P. Young asked for clarification on the age requirement of the age-restricted housing to age 55+, and J. Bosen stated that the Zoning Ordinance identified age 55 but if the ZBA wanted to increase the minimum age that could be a Condition of Approval. P. Young stated that when the Avesta elderly housing project was approved that she was the one vote that said that the project should also include low-income housing in addition to the elderly housing. She asked why isn't the project proposed as housing for anyone? She summarized her 3-issues with the proposal are: (a) the size of the units (are too big as compared with ADU requirements of 750-sqft max), (b) the proposed parking is not enough, and (c) the type of housing proposed does not provide any units for low-income people. She said that it is wonderful that the buildings are pretty, and she understands that that is important to HF and to many towns. She said that she only saw 2 handicapped parking spaces proposed for the site. She commented that the sidewalks are great if you can walk, but when it comes to parking for someone who is handicapped it is a challenge when the parking space is 300-ft from the door.

J. Augusta responded to P. Young's comments that he knows 2-grandmothers who do not have cars and who use Ride Share services. He stated that he knows that Ride Share businesses are increasing, and knows someone who opted not to purchase a vehicle because after doing the calculations figured it was more beneficial to Ride Share than to own and maintain a vehicle. He also stated that there are condos at the beach that do not have any parking, and those buyers buy those properties knowing those facts. He agreed with P. Young that if a person is elderly and has trouble walking that having parking closer to the building would be ideal. J. Augusta suggested the applicant may want to consider withdrawing their application and returning to the ZBA after taking all of the ZBA's comments into consideration.

S. Bryant commented that he loved the design of the building, and that he would love to see the property developed as housing, as a restaurant, etc., but he said that his concern is that he feels that the applicant is being disingenuous. He said that the applicant went to the PB and articulated things that they were willing to do, and then came to the ZBA back at 58-feet in height when they know they don't need it, and are asking how much can they get from the ZBA. S. Bryant said that what he would rather see is a proposal of what they really need, and then the ZBA can have an honest conversation about trying to help them possibly achieve their goals and objectives. He said that what the applicant has come to the ZBA with is completely unreasonable and disingenuous from what was previously discussed with the PB. He said for those reasons he would not vote for any of the 8 Variances tonight, but he also said that he is not averse to the project. He said that he thinks that there are things that the applicant can do to mitigate some of the Variances being requested

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PUBLIC COMMENT:

Chairman DeLeire stated that he received 2-letters regarding the proposed project and asked if the authors of the letters were present for them to please read their letters into the record.

Abby Tonry, Exeter Rd.:

Dear ZBA members,

Although I have only been a member of the Hampton Falls Planning Board for 31 years, I have lived in town 59 years. My parents looked at houses in many local towns in which to raise their family but chose Hampton Falls over all others because Hampton Falls had adopted Zoning Regulations. Since 1952, 71 years now, the Town's people have been requested in March to vote for or against zoning regulations put before them by the Town Warrant.

Since 1989 the town's people have approved 129 changes to our zoning ordinances. Although many ordinances did not pass, each was researched and considered by the Planning Board and its subcommittee for wording, content and the effect it would have on the town as we know it. For example, the height allowed on buildings; we considered fire protection and the equipment we own. Another example is the percentage of new units limited to the number of existing homes; to limit the number of new residents at one time was so the town services could assimilate them not overwhelming our services all at once. If a new fire truck is needed a new building would be required to house it, if a large number of new residents arrive and our services become overloaded, we may no longer be able to rely on a volunteer fire department and so on. The Planning Board is constantly updating our regulations to stay current with the times. As technology and building materials improve, we listen and adapt. But our Board's ability to approve or deny an applicant is limited to the approval of the entire town's people who voted for the ordinance. If the request from the applicant is outside of our scope, then your job begins. Your job is to consider if the applicant is asking for something that enough town voters would approve of if put before them by Warrant. They have told us what they will accept and now you, a limited number of Board members, get to override their voices with your own.

*With all that said it is my personal opinion that reasonable requests to increase or decrease our requirements are within your purview. I do not feel applicants should be allowed to request you to override the ordinances by 50, 100 and more percent of the original ordinance. If the applicant cannot meet our ordinances closely then is it possible the town folks of Hampton Falls who moved here for its integrity want it to be maintained by you?
Thank you.*

A.Dittami asked A. Tonry what the intent was behind the decision to increase the housing density along Lafayette Rd., and she responded that the density was increased because the Town wanted to encourage multi-family, elderly, workforce housing, and low-income housing. She stated that the amount decided on was based on a percentage of how many bedrooms could reasonably fit on an acre, and also what it would do to the Town. She said that the minimum to do that is 8-acres, and at 8-bedrooms per acre, that would be 64-units total allowed. A. Dittami asked if there was a State regulation that required the Town to make that density change, and A. Tonry responded, no, that it was just common sense and the PB always looked at other towns'

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regulations as examples. A. Dittami asked if it was discussed at PB and also at Town Meeting, and A. Tonry described that the PB is required to hold Public Hearings on any proposed zoning ordinance changes, so that the public can come and ask any questions about the proposed changes. Then the PB recommends the proposed zoning changes to the Selectmen who decide to advance (or not) the proposed changes to the Warrant for vote at Town Meeting annually in March. A. Dittami asked A. Tonry about the density of development on Lafayette Rd, and she said that up until a few years ago that Route 1/Lafayette Rd was never treated differently and was the same 2-acre zoning as the rest of the town. She continued that it was the expectation that it (Lafayette Rd) was never going to be residential. A. Tonry added a point that she asked how many people age 55 or older still have children in the school system, because the impact of the cost to educate one additional child in school would not be covered by 1-proposed unit's taxes.

Donald and Janet Towler, Pelton Way: Chairman DeLeire read their letter into the record because they could not attend the meeting tonight.

Our main concern as abutters of 12 Lafayette Road, is the traffic situation. It is already a hazard for us elderly to leave Pelton Way, or return home as many drivers use the change lane as a passing lane, making it a very dangerous situation. We are not against having housing built as it is very much needed, especially for the elderly, but we are very concerned about the proposal of 132 units. Could there be a compromise and build less units and what is the plan to alleviate the traffic that is horrendous at times, especially in the summer? We have found cars bumper to bumper from the Seabrook Walmart Shopping area, all way up to the light at the Hampton Falls Common leaving us waiting for a kind soul to allow us entrance into Pelton Way. We need assurance that something will be done to alleviate this traffic problem that surely would worsen with this proposed development.

And one other concern is that since it is described as a Mixed-Use- Development what kind of commercial building is planned for the first floor of one of the residential buildings? Thank you for your consideration of our concerns.

Geno Hardee, President of the Condominium Association at the Village of Pelton Farm, G. Hardy stated that Pelton Farm is located across the street from the proposed project. He has been a resident for 15-years. He said that he and his wife walk on Lafayette Road almost every day and the traffic is unbelievable. He said that the lane in which they walk is very narrow and tight. He said that the proposed project indicates 2 entrance/exits onto Lafayette Rd located on a curve in the road. His concern, and that of the 16-owners at Pelton Farms, is traffic coming onto and off of that property. He said that when there was a restaurant on the property 25-years ago the traffic on Route 1 was much different (less) than it is today.

Peter Davidsen, Kensington Rd.: P. Davidsen stated that he is an abutter and owns a parcel 2-acres less than the applicant, so why can't he propose to do the same thing on his property? He has owned his property for 20-years and has noticed a couple of businesses on Route 1 making more noise than previously. He said that he came to HF to appreciate the quiet life. He said that he agreed with P. Young about the parking. He said that he would be concerned if there were affordable units, as there are many examples in Seabrook and the results speak for themselves

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about the culture change. He said that HF is a town of fairly high taxes, and residents are paying those taxes because residents want HF to be a certain way. P. Davidsen said that the whole area around the pond could become multi-unit residential if the ZBA allows 1-property to do it, then an abutting neighbor to do the same, it would change the whole layout of the town.

Mike Mullins, Pelton Way: M. Mullins said that the traffic is unbelievable and pulling out onto Route 1 is scary. He said that he thought the design looked great. He stated that he has been in Real Estate a number of years and has never seen Variances like this. He said that it looked like a wish list of what can they build, like there is no zoning code at all. He opposed the size of the development being proposed.

Phil Giorgetti, owner of 34 Lafayette Rd: P. Georgetti stated that he thinks the building looks fantastic. He spoke about some property owners on the East side of Route 1 and how restricted they were/are due to wetlands onsite, for example the Landscape Supply place had 4-acres, and could only build on 0.5-acre. He said that both sides need to compromise to get something to work. He said that he has talked about the traffic light at the Common for years, and nothing changes. He said that he has a business in Wells, Maine and there is a “smart” traffic light there that changes when you pull up.

Chairman DeLeire closed the Public Comment.

Chairman DeLeire described how there has been a certain tone set, and he wanted to explain the potential outcomes. He addressed the applicant and said that if the ZBA were to vote on the 8-Variances and denied the application then that becomes another hurdle. If there was the potential to grant one of the Variances and something were amended then the applicant would eliminate that possibility without a change of circumstances. He explained that the applicant has the opportunity to ask for a Continuance to go back and try to come to something reasonable that the ZBA could digest. The applicant requested a brief break to confer with their client.

J. Bosen stated that the applicant has listened to the concerns of the ZBA and to the concerns of the abutters and they request the application be Tabled, and request a straw poll of the ZBA on the density tolerance to help them prepare a better project. Chairman DeLeire explained the differences between Continuing a case, that does not need to be re-advertised and re-noticed to abutters, and Withdrawing a case, that would need to be re-noticed as a whole new application. M. Sikorski clarified that if there are substantial changes then the application would need to be re-advertised and re-noticed.

J. Bosen requested the case be **Continued**, and then if the project looks substantially different then they would work with M. Sikorski to determine if the case needed to be a new application or not. He asked for a straw poll of the ZBA on their tolerance for density, and Chairman DeLeire stated that the ZBA is not inclined to give advisory opinions on what they might approve. He said that the 8-Variances are very intertwined and complex. He said that he thinks that the ZBA would very much like to see something happen on this lot, and he would like to see

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housing be a part of that. He said that if he voted on the 8-Variations tonight, that he would deny all of them.

M. Call said that the project is too big of an ask for the ZBA to vote on and he said that he felt that it was something that the citizens of HF should vote on. He said that a couple of years ago the Zoning Ordinance was changed to allow for increased density, but the project being proposed is so much larger than what the zoning allows, and he was not comfortable with the proposal this size without having the citizens of HF weigh in on it.

W. Vance agreed with M. Call. She said that she loves what the applicant is doing and the aspect of it, but the ZBA is representing the town and the residents are relying on the ZBA to keep the town the way it should be, and the proposal is wonderful, but it is just too big. She said that with all the Variance criteria, she cannot vote yes when the town has voted for the Zoning Ordinance for the Town, so she has to honor the town.

S. Bryant stated that he likes the architecture, however, the concerns are density, height, and parking. He continued that the PB is going to have to opine on the traffic issues.

MOTION: To Continue ZBA Case # 23-10 to the ZBA’s meeting December 14, 2023.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 09/28/2023

MOTION: To approve the meeting minutes from 09/28/2023 as written.

MOTION: S. BRYANT

SECOND: A. DITTAMI

UNANIMOUS

E. OTHER BUSINESS: There was no Other Business.

F. COMMUNICATIONS TO BOARD MEMBERS:

There were no communications to members.

G. ADJOURN:

MOTION: To adjourn the Zoning Board of Adjustment at 9:35 PM.

MOTION: W. VANCE

SECOND: J. DELEIRE

UNANIMOUS

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, November 16, 2023, at 7:00 PM at Hampton Falls Town Hall.

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