

ZONING BOARD OF ADJUSTMENT	AUGUST 31, 2017
TOWN OF HAMPTON FALLS	TOWN HALL

DRAFT

- A. PRESENT:** Frank Perry, Vice-Chairman; Larry Job; Steve Bryant; Mark Call; Alex Dittami, Alternate; Mark Sikorski, Building Inspector. Alex Dittami acted as the Recording Secretary and was, pursuant to the Vice Chairs direction, seated as a voting member in order to constitute a full 5 member board.
- B. CALL TO ORDER:** The meeting was called to order at 7:05 p.m. by F. Perry. Holly B. Fazzino was introduced as the new Secretary to the Board.
- C. PUBLIC HEARINGS:** After describing the general procedure that would be followed by the Board at the Meeting, the Vice-Chair opened the individual hearings.
 - 1. **CASE #17-01:** Application from Terry Anderton for Appeal from an Administrative Decision of the Building Inspector on March 21, 2017 in relation to Article III, Section 4 of the Zoning Ordinance (Article III, Section 7.2.1, Septic System, and issues in such letter) for property located at 51 Depot Road, Map 2, Lot 102. Continued from July 27, 2017. The applicant was present with his Attorney Monica F. Keiser.

After the call of the Case, L. Ruest reminded the Board that this matter had not been resolved last month. On a review of the previous meeting minutes, the Vice Chair agreed. The Applicant and his Attorney also agreed and the matter was tabled as it is being addressed with the next Case on the agenda.

- 2. **CASE #17-02:** Application from Terry B. Anderton, for a variance to the terms of Article III, Section 7.2.1.2, to permit a detached accessory dwelling unit in Zone A, for a property located at 51 Depot Road, Map 2, Lot 102.

The applicant was present with his Attorney Monica F. Keiser. Attorney Keiser made a presentation to the Board that followed the Application that had been made. F. Perry questioned the applicant who reaffirmed and represented that the property was no longer being used or offered or advertised for short-term rentals or being advertised as a function room. Applicant stated that there will be 4 bedrooms in the main house for Mr. Anderton, and two bedrooms in the carriage house as an accessory dwelling unit for a tenant and her daughter. Applicant also assured the Vice Chair that the Building Inspector was free to inspect the property and that he, the applicant, understood that it had to pass the Building Inspector's inspection in order to obtain an occupancy permit. Member S. Bryant observed that the apartment was built well before the Applicant purchased the property and that it was listed on the tax card. The Case was opened for public comment. There was none.

The criteria for granting a variance was discussed as follows:

1. The Variance will not be contrary to the public interest.

On balance, the variance does not adversely harm the essential character of the town or immediate neighborhood.

2. The Spirit of the ordinance is observed.

The carriage house has existed in its current configuration for many years without negative impact on the town or neighborhood. It does not negatively impact the essential characteristics of Hampton Falls.

3. Substantial Justice is done.

It would be unjust to require remediation of the property in conformance with the HF zoning ordinance after so many years and no fault of the current owner.

4. The value of surrounding properties are not diminished.

The carriage house/barn/garage has existed for approximately twenty years with no evidence that it has negatively impacted surrounding property values.

5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship

A. The property is unique because it has existed in its present form for many years without objection.

B. It would be unfair to the owners now, after many years, to require compliance with the ordinance when they had no hand in constructing the dwelling years ago.

MOTION: T. Anderton requested a variance to allow use of the barn/garage ‘carriage house’ as an accessory dwelling unit with a floor space of 1400 ft² versus 750ft² as restricted by town ordinances under Article III, Section 7.2.1.2: it is moved to accept this request subject to the following conditions:

1. Applicant must receive a Certificate of Occupancy from the Hampton Falls building inspector.
2. The number of bedrooms in the carriage house plus primary dwelling must not exceed the capacity of the existing septic system as verified by the building inspector.
3. Short-term rental of the carriage house as addressed in case 17-01 is not permitted.

MOTION: F. Perry

SECOND: S. Bryant

IN FAVOR: 5, 0 OPPOSED, PASSES.

A copy of F. Perry’s motion was entered into the record.

3. **Case #17-03:** Application from Kim and Tim Patenaude, for a variance to the terms of Article III, Section 7.7.1, to permit the installation/construction of an in-ground pool in Zone A, for property located at 1 River Road, Map 4, Lot 29-15. The Applicants were present and represented themselves.

The Applicants made their presentation to the Board. The presentation followed the Application that they had made that is on file with the Town. The Applicant also provided the Members of the Board with a larger plot plan that made it easier to understand and follow the presentation.

F. Perry questioned whether the plan would interfere with the septic reserve. The applicant said no. S. Bryant also questioned if the plan would create any danger. L. Job observed that the area was very nice and the planned use was consistent with the neighborhood. There was a discussion of the maintenance of the natural screening and setback requirements. F. Perry read the Building Inspector's letter regarding the property.

The meeting was opened for public comment. There was none.

MOTION: To approve a variance to the terms of Article III, Section 7.7.1, to permit the installation/construction of an in-ground pool in Zone A, for property located at 1 River Road, Map 4, Lot 29-15, S. Bryant

SECOND: A. Dittami

IN FAVOR: 5 IN FAVOR, 0 OPPOSED. PASSES.

- 4. CASE #17-04:** Application from **Dodge Development, LLC**, for a variance to the terms of Article III, Section 11.4.1 to permit a multi-family on 7.92 acre lot where 8 acres is required in Zone A, for property located at Dodge Road, Map 7, Lot 38-1.

The applicant was present with his Attorney Sharon Somers. Attorney Somers represented that the lot met all other requirements of the law except the lot size. She represented that her client wanted the approval before it would spend the money on or go forward with studies and plans. It was also represented that they could not purchase any of the needed land from the abutters as they all refused to sell. The Applicant made their presentation to the Board. The presentation followed the written Application that they had made which is on file with the Town.

Relying on the Applicants' explanation of how the property met the five criteria for a variance, A. Dittami asked a series of questions. The first concerned whether or not the variance would be contrary to the public interest. A. Dittami observed that the Applicant's language stated that the contrary to public interest test is measured by whether the variance will affect the essential character of the locality or whether it will threaten public health, safety or welfare. A. Dittami asked how the applicant expected the Board to make a decision on that test without having more explicit plans in front of them. Applicant replied that the essential character of the neighborhood was residential and that it would remain residential after the variance. A. Dittami asked if that meant because it is a single-family residential area, it should remain single-family residential. Applicant did not answer. When asked as to whether or not the style and type of housing that would be put there would alter the neighborhood, the applicant insisted that the test was residential to residential. A. Dittami then asked about whether or not the spirit of the ordinance would be observed by altering an area requirement that had been explicitly approved by

the voters and reaffirmed by virtue of the abutters refusal to sell property. Again, the Applicant insisted that the spirit of the ordinance was to ensure that there was a diverse supply of homeownership and rental opportunities while preserving the rural character of the town. A. Dittami observed that the property had sufficient acreage to support two homes with two accessory dwelling units - four units in all - therefore the spirit of the ordinance was fulfilled without the variance. Further, he also observed that without detailed plans on the property it's impossible to tell whether or not the variance will help preserve the rural character of the town. With respect to the "justice" argument the Applicant observed that it would be inappropriate for them to spend money on a plan before they got approval for the lot size. The Applicant also argued that nobody would be harmed by the granting of the variance. A. Dittami observed that the voters had specifically created a tiered system of multi-family zoning within the community and that they would be harmed by a variance that would undermine the tiered system they designed and approved. With respect to the values of the surrounding properties, A. Dittami asked how that evaluation could be made without more in-depth plans of the property. Again the applicant indicated they could not do any plans until they knew how much land they were dealing with and reiterated their belief that the property would maintain residential in character. Finally, with respect to the hardship provision, on questioning from S. Bryant and A. Dittami, the applicant acknowledged that they were aware of the lot size deficiency when they bought the property and that they would need to get a variance from the ZBA. They also stated that they knew that the variance is not a sure thing. Accordingly any hardship that was created, economically speaking, was self-inflicted and was not created by the enactment of the ordinance.

Throughout the course this exchange S. Bryant, L. Job and M. Call also expressed concerns about being able to make an adequate decision about the impact of the decision without seeing more detailed plans on the property.

F. Perry commented that there was a rigorous process for approval for a workforce housing or elderly housing project. At this time we are only there to discuss the size of the property so as to make a determination as to whether or not the project should go forward. He also indicated that there does not have to be a dogmatic enforcement of the ordinance, rather, as long as the spirit of the ordinance would be maintained it would be appropriate to a grant the variance. In response, A. Dittami gave a more detailed explanation of the tiered system of multi-family housing contained within the town ordinances. F. Perry questioned whether or not there would be a density question involved. That question however could not be answered, as there was no definitive plan in place. F. Perry observed in making a decision, without further information, on the impact on the density and other aspects of the neighborhood would be inappropriate.

More comments were made by the other members of the Board including L. Job and M. Call. Generally speaking, the comments were sympathetic to the Applicant, however they stressed the point that without more definitive information it would be difficult to make a favorable determination(s) under the five requirements for granting a variance.

Vice Chairman F. Perry opened the meeting to the public. The first speaker was Robert Durant of Pages Lane. R. Durant was against granting a variance. The property had been previously approved for a four-bedroom house and septic that was still capable of being constructed. Further, if multi-family housing was allowed in the area, he was concerned about the number of buildings that would be up against his property line and the worsening of the speed and vehicle traffic problems in the area, none of which were addressed by the applicant. The next speaker was Kelly Gantreau of 6 Dodge Lane. She examined the property and indicated that the property was perfectly suited for a single-family house. She opposed any development beyond that because, pursuant to the Applicant's plan, the buildings would be up against her property. Her comments raised questions about the Applicant's representation about preparing a conceptual plan. K. Gantreau showed the Board copies of some architectural renderings that were part of a package of preliminary plans submitted by the Applicant to the Planning Board. At that time it was clear the Applicants had misrepresented their intentions and that preliminary plans for the project had already been drawn up. As K. Gantreau suggested it was a misleading tactic on the part of the applicant. She also indicated that when the applicant approached her to purchase of the property they never mentioned that it was their intent to develop it for a multifamily parcel. This was a concept she believes is not appropriate in light of the fact that he did not meet the requirements of the zoning.

The next speaker was Sander Custer on behalf of Jay Roth of Kensington Road. J. Roth is an elderly person and was unable to attend. She did, however, send a letter of protest to and asked S. Custer to represent her at the ZBA meeting. J. Roth is fully against the variance as property values will be affected; it would disturb the lifestyle of the neighborhood; have an impact on the wildlife in the area and could well have an adverse impact on the foundation and wells in the area. The letter sent by J. Roth was not available at the time in the meeting.

It was however a second letter from Todd Duchenne that was read by F. Perry which reiterated many of the same comments that had already been expressed by the Board and other abutters.

The Applicant commented that the purpose of his phone calls were to measure the intent of the people and was not meant to mislead them. F. Perry commented that the Applicant's representations put the Board in an awkward position as, in spite of their representations there already were concept drawings the Applicant prepared that could have been shown to the Board.

At the end of the discussion, the Applicant requested a continuance. A. Dittami objected, saying that given these facts, as they were presented, it would not make any difference: the Applicant could not satisfy the five requirements of the variance.

MOTION: Not to allow the Applicant to continue the hearing. A. Dittami.

SECOND: S. Bryant. S. Bryant also indicated that he was uncomfortable with the presentation due to the lack of information and that it was unlikely that any information could justify the variance.

IN FAVOR: Two voted in favor, A. Dittami and S. Bryant, and three voted against.
FAILED.

MOTION: To continue the matter. F. Perry.

SECOND: L. Job.

IN FAVOR: Three voted in favor, Two opposed. **PASSES.** The matter was continued to the October 26, 2017, meeting of the ZBA.

5. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: July 27, 2017:

MOTION: To approve the minutes of the July 27, 2017 Meeting Minutes as written. S. Bryant.

SECOND: L. Job.

IN FAVOR: Unanimous.

Other Business

6. Continuing Education Opportunities

F. Perry discussed a continuing education opportunity for members, the Municipal Law Lecture Series. See L. Perry for the registration information.

7. MOTION: To adjourn the meeting at 9:30 P.M.

SECOND: L. Job.

UNANIMOUS.