

ZONING BOARD OF ADJUSTMENT	AUGUST 22, 2019 7PM
TOWN OF HAMPTON FALLS, NH	TOWN HALL

CALL TO ORDER: Chairman John DeLeire called the meeting to order at 7:04 p.m.

ROLL CALL: John DeLeire, Chairman, Steve Bryant, Vice Chairman, Mark Call, Patricia Young, Members; Mark Sikorski, Building Inspector.

Not Present: Larry Job, Scott Almeda, Members; Alex Dittami, Alternate Member-

Chairman DeLeire explained that although there is a quorum present, the applicants have the option of continuing their applications until a full Board is present. He noted that any decision would need to be a majority vote. Chairman DeLeire listed the names of the voting members for tonight's meeting which includes himself, Vice Chairman Steve Bryant, and member Mark Call and Alternate Member Patricia Young.

C. PUBLIC HEARINGS:

Case #19-01: Application from **Brianna O'Brien**, for a variance to the terms of Article III, Section 7.2.1 and asks that said terms be waived to permit a detached accessory dwelling unit in a new structure as well as a variance to the terms of Article III, Section 7.2.1.5 and asks that said terms be waived to permit a detached accessory dwelling unit in a new structure that does not meet building code in Zone A at property located at 4 Sanborn Road (Map 4, Lot 33). *Continued from 7/25/19.*

Brianna O'Brien was present and agreed to move forward with her application tonight. Applicant O'Brien speaks to the five criteria for granting a variance as provided in the application to the Board and adds that other state's building codes currently allow tiny homes. She also offers to assist the town in incorporating these tiny house building codes into Hampton Falls' building code and zoning regulations. Brianna also notes that the State of New Hampshire is currently in the process of organizing a commission to study the Tiny House movement in the granite state.

Chairman DeLeire reminds the applicant that the Zoning Board of Adjustment does not create zoning and building codes, but upholds the code that is put in place by the Town and recommended by the State. He adds that even though the idea of the tiny house is attractive and environmentally friendly, it does not comply with currently existing code. New Hampshire House Bill 312, which creates a committee of legislators to study rules about the construction of tiny houses in New Hampshire, has only recently passed and these regulations currently do not exist.

The applicant inquires as to why Hampton Falls uses New Hampshire Building Code 2009 (2009 International Building Code®) and not a more recent version of the International Building Code® which includes Appendix Q. Appendix Q includes building code standards for tiny houses on foundations only and not tiny houses on wheels (THOW). THOW follow standards for RVs referencing standards for lofts, stairs, egresses, and ceiling heights. In order to apply codes of Appendix Q, which has not been adopted, the applicant's structure would need a foundation. Mark Sikorski, Building Inspector, remarks that the State of NH has not adopted the

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2018 International Building Code® and all towns in NH currently follow adopted 2009 International Building Code®.

Mark Call states that he would be more comfortable moving forward with this variance if there was a system of regulations in place to evaluate the safety codes of tiny homes. Hampton Falls' building codes and zoning, along with the State of New Hampshire, does not include this specificity at this time.

Vice Chairman Bryant reminds all present that it is not within the Zoning Board of Adjustment's purview to adopt regulations, but to enforce existing town building codes and requirements. Currently this dwelling unit (tiny house on wheels) does not meet the definition of the detached accessory dwelling unit in Article III, Section 7.2.1.

Applicant O'Brien inquires as to the reasons why her dwelling does not qualify as a detached accessory dwelling unit. Chairman DeLeire states that it does not meet Article III, Section 7.2.1 or Article III, Section 7.2.1.5. Applicant O'Brien informs the chair that she can pay for a septic design to meet sanitary standards for residential buildings, and that it's her belief that the unit meets electric standards and building codes, apart from a second form of egress which is currently a few inches smaller than code. Chairman DeLeire reminds the applicant that typically applications show existing conditions plans before a variance is requested; the board would review septic design and egress modification plans before a variance can be made. At this point, the board would be relying on the applicant's word to make these changes.

After further discussion, Chairman DeLeire opens the public hearing.

John Nyhan, President of the Hampton Area Chamber of Commerce (Winnacunnet Rd., Hampton, NH), speaks upon the issue of economic and workforce development in the community. He stresses that the young workforce needs to be able to afford living in this community and tiny houses are a sustainable option to retain these workers. He feels Applicant O'Brien's request is just the beginning, and requests that the ZBA consider granting a variance to the terms of Article III, Section 7.2.1 so that said terms be waived to permit a detached accessory dwelling unit in a new structure.

Stephanie Burrows (South Hampton, NH) states her reason for being at the public hearing is to support Applicant O'Brien. Burrows has been involved in research and community networking via the Tiny Homes of New England Meet Up Group. The group currently has 450 members from New Hampshire and New England, which exemplifies that there is a strong interest in this way of living.

The Hampton Union reporter (Angel Jean) inquires if the ZBA can adopt Appendix Q or if that needs to be approved by another municipal entity. Chairman DeLeire commented that the ZBA does not create zoning rules and regulations; zoning rules and regulations are provided for the ZBA.

Chairman DeLeire closed the public hearing.

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The board reviewed the five criteria for granting a variance and provided comments as follows:

1. **The variance will not be contrary to the public interest;** Criteria not met. The variance would be contrary to the public interest because the structure is currently existing, therefore the modifications are not in compliance and should have been discussed prior to the particular building of the structure.
2. **The spirit of the ordinance is observed;** Criteria not met. The ordinance says a protocol should be followed and it's not being followed.
3. **Substantial justice is done;** Criteria not met. Justice is not done to Hampton Falls and the building codes if relief is granted.
4. **The values of surrounding properties are not diminished;** Criteria not met. It is possible that values could be diminished.
5. **Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.** Criteria not met. There is an opportunity to have an accessory dwelling unit on site, but that opportunity was not exercised and instead this particular chain of events took place which is contrary to what is typically seen.

MOTION: To deny the applicant's request for a variance to the terms of Article III, Section 7.2.1 to permit a detached accessory dwelling unit in a new structure.

MOTION: J. DELEIRE
SECOND: M. CALL
3 IN FAVOR, 1 OPPOSED, PASSES.

MOTION: To deny the applicant's request for a variance to the terms of Article III, Section 7.2.1.5 to permit a detached accessory dwelling unit in a new structure that does not meet building code in Zone A for the same reasons as outlined in the five criteria above.

MOTION: J. DELEIRE
SECOND: M. CALL
3 IN FAVOR, 1 OPPOSED, PASSES.

Case #19-02: Application from Josh and Lesli Breault for variance to the terms of Article III, Section 7.1.1. and asks that said terms be waived to permit placement of a shed in setbacks in Zone A for property located at 4 Evergreen Drive (Map 4, Lot 32-6) *Continued from 7/25/19*

Chairman DeLeire noted that the section number of Article III should be corrected from Article III, Section 7.1.1. to Article III, Section 7.1.2. All members were in agreement.

Josh Breault was present and agreed to move forward with his application tonight. Applicant Breault speaks to the five criteria for granting a variance as provided in the application, as well as elaborates on the characteristics of the parcel of land in which the shed would be placed and surrounding parcels. Neighbor and abutter Kevin Saunders is not present, but applicant Breault said he was notified and has no issues with the proposal.

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Chairman DeLeire opened the public hearing.

Caroline Petit (6 Sanborn Rd, Hampton Falls) inquires if the proposed shed will be at least 50 feet away from the retaining rock wall located on the property line and applicant Breault confirms this to be true.

Chairman DeLeire closed the public hearing.

MOTION: To approve the applicant’s request for a variance to the terms of Article III, Section 7.1.2. to permit placement of a shed in setbacks as shown on the plan presented in Zone A for property located at 4 Evergreen Drive (Map 4, Lot 32-6) for reasons as outlined in the five criteria as detailed in applicant Breault’s application.

MOTION: S. BRYANT
SECOND: J. DELEIRE
UNANIMOUS

Case #19-03: Application from Micah Denner on behalf of Nicole and Dan Syvinski for a variance to the terms of Article III, Section 7.7.1 and asks that said terms be waived to permit the installation of a septic system to replace an existing failed system and expansion of use in Zone A at property located at 14 Goodwin Road (Map 1, Lot 80). *Continued from 7/25/19*

The applicant was not present and no notifications of withdrawal of application was received. The town will follow up with the applicant to confirm their intentions. No action was taken by the Board.

Case #19-04: Application from Michael and Tammie Morse for a variance to the terms of Article III, Section 7.7.1 and asks that said terms be waived to permit the placement of a pool gazebo within the 50 foot setback in Zone A at property located at 29 Depot Road (Map 8, Lot 84-4).

Richard Morse is representing applicant Michael and Tammie Morse; a letter of authorization is on file. R. Morse was present and agreed to move forward with the application tonight. R. Morse speaks to the five criteria for granting a variance as provided in the application, as well as references site plans and a letter of support from abutter James Mitchell that was provided for tonight’s meeting. R. Morse also notes that there was a billing error from the town regarding an incorrect case number, but this error has been corrected and any outstanding bill has been paid.

After further discussion, Chairman DeLeire opened the public hearing. There was no abutter or public comment, so Chairman DeLeire closed the public hearing.

MOTION: To approve the applicant’s request for a variance to the terms of Article III, Section 7.7.1 to permit the placement of a pool gazebo within the 50 foot setback as shown on the plan

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presented in Zone A at property located at 29 Depot Road (Map 8, Lot 84-4) for reasons as outlined in the five criteria as detailed in applicant Michael and Tammie Morse's application.

MOTION: S. BRYANT
SECOND: M. CALL
UNANIMOUS

OTHER BUSINESS: 2020 Budget (4192) The Board did not discuss the 2020 budget at this time.

COMMUNICATIONS TO BOARD MEMBERS: No communications were discussed at this time.

D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 4/25/19; 6/27/19; 7/25/19:

MOTION: To approve the meeting minutes from the 4/25/19, 6/27/19, 7/25/19 meetings as written.

MOTION: J. DELEIRE
SECOND: M. CALL
UNANIMOUS

G. ADJOURN

MOTION: To adjourn the meeting at 8:45pm.

MOTION: S. BRYANT
SECOND: J. DELEIRE
UNANIMOUS

The next meeting of the Zoning Board of Adjustment is scheduled for Thursday, September 26, 2019