

ZONING BOARD OF ADJUSTMENT	November 17, 2022 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

Please note that meetings of the ZBA have been video recorded. Meeting Minutes are maintained on file at the Town Clerk's office, Town Hall, 1 Drinkwater Road, Hampton Falls, NH. Meeting Notices are posted on bulletin boards at the Town Hall, Library, Hampton Falls Post Office, and the Town website at: www.hamptonfalls.org for minutes, meeting agendas, videos, and more information.

A. CALL TO ORDER:

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

B. ROLL CALL:

3 MEMBERS and 3 ALTERNATES PRESENT: John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Member; Alex Dittami, Member; James Hasenfus, Alternate; Patricia Young, Alternate; Jim Manna, Alternate

3 ABSENT: Mark Call, Member; Weezie Vance, Alternate Jude Augusta, Alternate

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

GUESTS: Shanon Alther, TMS Architects for the owner, Terry Anderton.

C. PUBLIC HEARING:

Case # 22-06: Application from **Shannon Alther, TMS Architects**, for a Use Variance to the terms of Zoning Ordinance Article III, Section 8.4.11, and asks that said terms be waived to permit new attached 3-car garage in area of existing asphalt and within 100' buffer zone, in Zone AR: Agricultural Residential, at property located at **51 Depot Road, Map 2, Lot 102.**

The applicant, Shannon Alther, TMS Architects for the owners of 51 Depot Road, stated that he was asked to develop a solution to provide a three-car attached garage to the existing structure. S. Alther described the layout of the property as tricky because of its location, setbacks, and proximity to the marsh. He continued that he discussed his ideas with the Building Inspector, M. Sikorski, who suggested that he first bring his proposal to the Conservation Commission, which he did. S. Alther said that the Conservation Commission did not have any specific issues with the property when he presented his plans, although they did start to talk about why the attached garage is being proposed in one location when there may be the possibility to utilize part of another building, so there were conversations on that topic. Ultimately, S. Alther summarized the letter written by the Conservation Commission to NH DES Wetlands Bureau (copy in the ZBA packets) said that they (the Con Comm) were not going to deny the application, but they (the Con Comm) did have concerns about where the potential addition is proposed to be located. S. Alther stated that he is before the ZBA tonight with a request for a Variance, and if approved, or approved with conditions, then he will subsequently apply to NHDES for their final review afterwards.

S. Alther provided an orientation to the site, referencing a large-scale plan, that all ZBA members had received previously in their packets. The site is located at the eastern end of Depot Road on the south side of the road. There are two (2) curb-cuts into the property. The place where the applicant wants to locate the attached garage is the eastern-most curb-cut, because there already is asphalt in that location. The proposal is to construct the garage on top of the existing asphalt, and then remove a substantial amount of the remaining asphalt and replace it with pervious pavers to create an improved drainage system for the site than currently available.

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S. Alther showed the ZBA members the location outlines of the seventy-five-foot (75') wetland buffer lines and stated that the buildable area of the site is quite small. S. Alther stated that the property is large enough to absorb the proposed addition without exceeding the building coverage maximum of the zoning ordinance. While the addition of the garage will increase the impermeable area, the proposal to replace existing asphalt with pervious pavers results in an overall reduction of sealed surfaces from 5.9% to 5.3%. In terms of water management and storm flow, the pervious pavers will allow rainwater to come off the new addition and existing roofs to get filtered into the aquifer a little quicker than sheet-flowed out into the road.

S. Alther continued his presentation, and described that there is a proposed mud-room connector space between the proposed garage and the existing house. There is a gap between the existing house and the garage, to provide pervious pavers to manage the roof drainage between the two, and to not increase the sheet-flow that would happen if the two roofs were connected. S. Bryant asked about the rest of the proposed addition, as it looked like there was a second floor. S. Alther described that the second floor of the proposed garage is for office, storage, or exercise room, but based on the footprint of the building, the idea is based on the three-bay garage. Chairman DeLeire asked if there was anything in the proposed new structure that would impact the septic system such as a new bathroom, or sink; and, S. Bryant said that was what he was getting at was whether the space above the garage was really going to turn into a bedroom. S. Alther said that the space is not going to turn into a bedroom, but they had discussed adding a toilet and a sink for the office. He said that he knew that the septic system had recently been reviewed. He stated that Henry Boyd, of Millennium Engineering, had previously done the site plan for a storage shed location a couple years ago and included the leach field and septic location on the plan. S. Alther stated that it was determined at that time that the septic system met the requirements for the number of bedrooms on the property. He said that it would be nice to have a toilet and sink in the office area, but it is not a requirement where their primary goal is to construct an attached three-car garage.

S. Alther presented his application in terms of the five (5) criteria for a Variance as follows:

- 1) The Variance will not be contrary to the public interest because the existing conditions are already impermeable or impervious. A new garage and the associated work would positively increase the water management on the site and would benefit the public interest.
- 2) The spirit of the ordinance is observed in that the proposed work would make the buffer zone more impermeable than it is currently.
- 3) Substantial justice would be done because the proposed work would allow this sensitive and tricky lot to create an attached three-car garage to the existing house with a mud room connector.
- 4) Explain how the granting of the Variance will not diminish the values of the surrounding property. Granting of the Variance will increase the value of the subject property with the attached garage, and by way of association, will increase the surrounding property values.
- 5a) The subject property is almost entirely within the seventy-five-foot (75') or the one-hundred-foot (100') buffer zone, and therefore has a special condition regarding the Town's zoning review. The proposed use is a reasonable one, as an attached garage in New Hampshire is typical and functional.

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5b) The proposed garage element would allow an existing and permeable surface to be reduced which will create positive water management on the lot and into the adjacent wetland areas. This would allow the proposed garage element that would benefit the lot, the neighbors, and the Town of Hampton Falls.

Chairman DeLeire identified a couple of statements made by the applicant, for which he wanted further information, namely: ...that “associated work would positively increase water management”, and that “existing impermeable surface will be reduced to increase positive water management”. Chairman DeLeire asked where the applicant obtained that criterion, so that he was able to make that statement? Was there a certain measurement done that enabled the applicant to arrive at that conclusion? S. Alther responded identifying the amount of asphalt proposed to be removed at 1,300 sqft, and the number of pervious pavers proposed to be installed, that the pervious pavers will allow the rainwater the opportunity to enter the aquifer faster than impervious asphalt. Chairman DeLeire asked the applicant if he had installed these pervious pavers previously, and he responded that he had.

S. Bryant followed up asking about the crushed stone labeled on the plan, where the applicant had been discussing the pervious pavers to be located. It was determined that the crushed stone label was for the walkway to the shed, and not in the proposed construction area. S. Bryant asked about the area on the west side of the house, and could an attached garage be located in that area, also on an existing driveway, without needing a variance approval? S. Alther responded that he supposed an attached garage could be located in that area, but it would be challenging, if not impossible, to access parking in the lower level of the guest house using the shared driveway. He added that the location west of the house is the area where parking is currently located, and it is close to the marsh.

Chairman DeLeire explained to the applicant that all five (5) of the criteria for the Variance must be met to be approved, not just four (4). He continued that one of the points to overcome was what S. Bryant raised that inconvenience in terms of putting a structure in a location, although it would be allowed without a variance, is something that the ZBA has to consider. Another point Chairman DeLeire raised was that the requested use is a prohibited use, which is a higher-level test than typical because of the measurement to overcome being the “spirit of the ordinance” (criteria #2). Chairman DeLeire reviewed the applicant’s response to criteria #2, that the buffer zone will be more permeable than it is currently, but the relief the applicant is asking for is technically prohibited. It does not meet the criteria for a special exception, and so it is very difficult for the ZBA to overcome.

S. Alther responded that coming to the ZBA to propose the attached garage inside the buffer area is a challenge given the zoning criteria. Looking at the entire property, in terms of the wetlands, the very poorly drained soils and the marsh, the location of an attached garage to the west of the house was considered not a viable option due to the existing conditions of the house. The proposed location made more sense because it would be located on top of existing asphalt. He noted that many town zoning ordinances were developed after existing homes were built, and issues of lot coverage would not have been an issue previously but is an issue now with the better

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ordinances. S. Alther continued that the proposed garage gives the applicant the opportunity to rectify or to do something better than the same proposal 50, 40, or 30 years ago that may have been approvable under prior zoning. Under current zoning (better regulations), applications such as this, must come before the ZBA to get approval. The applicant summarized that the location is a very tricky lot, and that he felt that the proposal was a good application for this location, and it is a unique property because of its context at the end of Depot Road and the amount of marshlands, and the wetland protective buffers present.

A.Dittami asked a question about the pavers and how much more absorption quality do they have compared with what is there now, is it a 2:1 or a 3:1 ratio? S. Alther responded that he did not know the ratio, but he described how the pervious pavers work. He said that the pavers allow a certain gap between the pavers (due to bumps on the sides), that is filled with a certain material similar to stone dust. Underneath the pervious paver system requires a certain type of material layout. Typically, rainwater that sheet flows across the asphalt is one-hundred percent (100%) impervious and cannot be absorbed through the asphalt, whereas the pervious pavers allow one-hundred percent (100%) of the rainwater to be absorbed over a certain period of time.

A.Dittami asked how the rainwater would be handled sheeting off the proposed new attached garage roof, being concentrated in one or two areas, how that would not overcome the pavers? S. Bryant added that the rainwater shedding off the new roof has to go somewhere. Chairman DeLeire said that the calculation was provided that it will be a proposed reduction of 0.6% of impervious surface overall. S. Alther said that Henry Boyd, Millennium Engineering, is aware of DES's criteria for review within wetland buffers and told him that they could do a retainage or a detention basin, where all the garage roof rainfall would go into gutters and downspouts into a specific spot. S. Alther said that he does not have enough of that information to design it, but he knew that DES does not like that detention basin in the buffer zone, but he is happy to look at it. A.Dittami suggested that the applicant consider providing that information to show the environmental consequences that the Conservation Commission may be concerned with, and the rainfall runoff will either be the same or better than it is now. A.Dittami continued that without that type of information there is really nothing to justify deviating from the ordinance. S. Alther summarized that the ZBA would like to see a stormwater management plan to help understand the positive implications to the project.

Chairman DeLeire agreed, saying that it appeared that some of the ZBA members were having trouble with the water management aspect of the application. He said that the applicant made a particular representation and that what they have requested of previous applicants is to have that representation proved scientifically. S. Alther said that he is happy to get a stormwater management plan to help provide the ZBA with more information, for the ZBA to make a more informed decision. Chairman DeLeire said that there is the caveat that there is no guarantee that the information provided will satisfy the ZBA to provide the relief requested.

S. Alther said that the two issues were (1) whether the garage could be located in the area west of the house, outside of the buffer, and (2) the stormwater management plan.

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Chairman DeLeire said that the things going for the applicant include the fact that it is a unique lot, with some challenges, and those are some things that help the ZBA make a decision. If this were an ordinary typical flat, dry lot, then there would probably be little possibility of a hardship. It is a unique lot as the Conservation Commission outlined. Probably not a lot you could build on today, but as the applicant said, things were different in the 1980s than today. So, it already exists and there is the opportunity to ask for the particular relief for which the applicant has requested.

Chairman DeLeire explained that if the applicant believes that providing the additional scientific information discussed (a stormwater management plan) would help the ZBA make a decision in the positive, then the applicant has the choice to request a Continuance of his case to the next ZBA meeting, or the applicant could choose to proceed with requesting a decision tonight, it is the applicant's choice how to proceed. First, Chairman DeLeire wanted to make sure no one else had any questions.

S. Bryant wants to see more information regarding why the location of adding the garage to the west end of the house doesn't work, because that location is not within the buffer zones, and is therefore not prohibited.

P. Young said that when the ZBA asked about the space between the two existing buildings, is the ZBA allowed to say, it is not our fault that you (the applicant) put the entrance to the garage in the wrong area? Can we say, too bad, you have to move your proposed garage location? She continued saying that she did not seem that that was something the ZBA could say to an applicant, that you have to change this other building to locate the new addition. Chairman DeLeire responded that it is something that should be known by the ZBA, whether it is possible to locate the proposed use on the site without needing a Variance. P. Young asked the question, but could it go there, given the parking access needs into and out of the lower level of the guest house building, she doubted there would be enough space to back-up out of the guest house. S. Alther responded that it would be a challenge. He said that they looked at modifying that area but determined that they could not get in and out of the old garage (in the bottom of the guest house). If the applicant sited the new garage there, they would have to abandon the old garage, because they would have to rearrange the driveway area, and there is stone on the bottom half of the (guest house) building, so it became a challenging opportunity to try to make that work. Chairman DeLeire said challenging but perhaps not impossible, and yet another thing to reconsider.

Chairman DeLeire responded to P. Young's comments saying that the ZBA is not in the business of telling people what they can and cannot do with their property, but rather measuring whether relief should be granted for proposals against the five (5) criteria of the variance test. P. Young reiterated her question, how do you put a three-car garage addition there if that is the entrance to another building (the guest house)? So, she said that it is really not a viable space in her mind. S. Bryant responded saying that he has no idea if a three-car garage could or could not fit there between the house and the guest house, because no one has shown him a photo or a drawing or anything to prove otherwise. He said, "Help us (the ZBA) understand and appreciate why a particular space that is buildable is not able to be buildable". P. Young stated that she thought the

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applicant responded to that question by saying that that is the entrance to the garage (under the guest house), so how do you get there if you put a building in front of it? Chairman DeLeire said that there would have to be some modifications, and it was like the applicant said, it is not impossible, it may be improbable, it may be something that the property owner does not want to do, but it still may be possible. And if it is possible, then the ZBA has to consider it under the five criteria because as a hardship there is usually no other alternative, but for the one that is being requested, and if there is another alternative, then we have to at least measure it and take it into consideration even if it is difficult. Chairman DeLeire said that prior applicants have come to the ZBA asking for relief to build an addition because they did not want to cut down a tree that was in the way. And the ZBA said, yes, that is a beautiful tree, but if you cut the tree down, then you can put the building there. P. Young took exception with the example saying there is a difference between a tree that can be easily cut down, and a building that already exists with doors and an entranceway, that you (Chairman DeLeire) are proposing that they (the applicant) cannot use the guest house building anymore because a new garage addition is going to be located there. She said that she was trying to understand where some of her ZBA peers were coming from when the applicant told the ZBA that location, in between the house and the guest house, is the entrance to the guest house garage. Chairman DeLeire said that it is a factor in making the decision as to whether there is a hardship.

A.Dittami recalled a prior ZBA case where the question became not whether you can do it or not, but what is the expense to do it? He recalled that case where to accomplish the proposal within the build zone would have cost the applicant twice the value of the property, and in that instance the requested relief was granted. P. Young stated that she did not see the space between the house and the guest house as a viable space to locate the proposed three-car garage addition. S.Bryant said that he was not saying that he thought it was or was not a viable space, but he was saying to help him understand it better, that options have been contemplated and that those options are not viable. He wants more diligence, so that the ZBA can complete more diligence voting on a prohibited use.

S. Alther said that he would be willing to request a Continuance to be able to provide the ZBA with the information requested as a result of the feedback received tonight, about the alternate location, and about the stormwater management plan. Chairman DeLeire said that maybe there are some additional ways to show the improbability of the alternate location whether monetary or other complications such as drainage and elevation, etc.

P. Young asked what the dimension was between the house and the guest house? S. Alther measured the distance at approximately sixty-feet (60'). And the follow-up question by Chairman DeLeire was how wide the three-car garage is, and the response was thirty-six feet (36') wide, by twenty-six feet (26') deep. Chairman DeLeire suggested that there would be some space left, but he said that he is not suggesting that it makes it easy to put it there. He said that the numbers may lend themselves to make it easy to locate the building there and still be able to access the guest house garage, although it may not be easy to do that, there may be some challenging angles. It is up to the applicant to prove that it is not a place that is viable solution to moving forward and not needing relief to build what they want.

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M. Sikorski asked how many parking spaces are located in the lower level of the guest house, and the applicant responded six (6) with only one entrance door. M. Sikorski noted that the tax card shows a garage located in the basement of the existing house, and S. Alther said that is no longer being used as a garage.

Chairman DeLeire asked M. Sikorski if he hypothetically had any issues with the proposed building addition based on the information available. M. Sikorski responded that the proposed location for the garage is probably the highest point in elevation of the property. He said that the good part of that scenario is that the new addition will be above the potential waterline. He was not in favor of locating a new structure in any proximity to the septic reserve area, so as to preserve the potential future relocation of a septic system should one be needed in the future. M. Sikorski said that he was not in favor of adding a structure between the two buildings, as that is the lowest part of the property. He applauded the architect for designing the proposed garage where he did because it is the highest piece of land on the property. He said that he thought the biggest concern was the runoff, and whether there is going to be an increase or a decrease in the amount of runoff, or if it is going to remain relatively the same.

J. Manna asked if there is a plan for the pervious pavers such as specifications for type of materials and depths for installation. S. Alther responded that they typically use a product made by Unilock that requires two-to-three inches (2"-3") of sand between, with six-inches (6") of sand below, and then twelve-to-fourteen-inches (12"-14") of gravel below the sand, so the idea is that the system filters quickly, and all material types are prescribed. S. Alther said that he is happy to provide more details about that at a subsequent meeting if continued. A. Dittami asked J. Manna does the way it is constructed affect the way the water flows, and J. Manna said yes, that he would assume that the wetlands are very poorly draining soils, and it would be nice to see an outline/cross-section of the excavation plan, with size of pavers, and the dimensions of sand and gravel layers, etc. Chairman DeLeire said that the applicant has received specific feedback as to what ZBA members are looking for, in terms of additional information to help them make more informed decisions, and asked if the applicant was still wanting to request a Continuance to the next ZBA meeting in December, and S. Alther responded yes, and asked if he could push it out two months to January, as he was not sure if he could get on Henry Boyd's calendar in time to meet the December ZBA meeting. There was discussion about whether the ZBA could continue for a two-month term, and it was decided to go month-to-month.

PUBLIC COMMENT: There were no Public Comments.

MOTION: To Continue Case # 22-06: Application from Shannon Alther, TMS Architects, for a Use Variance to the terms of Zoning Ordinance Article III, Section 8.4.11, and asks that said terms be waived to permit new attached 3-car garage in area of existing asphalt and within 100' buffer zone, in Zone AR: Agricultural Residential, at property located at 51 Depot Road, Map 2, Lot 102, to the Zoning Board of Adjustment's next regularly scheduled meeting of December 15, 2022 at 7:00 PM at Hampton Falls Town Hall.

MOTION: J. DELEIRE

SECOND: P. YOUNG

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5-YES, 0-NO, 1-ABSTAINED (A. DITTAMI); MOTION PASSED

D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 10/27/2022

MOTION: To approve the meeting minutes from 10/27/2022, adding that the video of the meeting be incorporated into the minutes.

MOTION: A. DITTAMI

Discussion of the motion by Chairman DeLeire included the question of how long the videos are available to be viewed, how long are they archived? A. Dittami responded that the videos are available for as long as the videos have been recorded, for several years. M. Sikorski said that an inquiry with Town Hall Streams could easily answer the question. Chairman DeLeire was concerned if ever a video were missing that the record could be construed as incomplete. A. Dittami said that he felt that it was important to add the video as part of the record because the minutes do not always capture all of the nuances, which may be significant if a case were appealed. A. Dittami added that there is talk that the case of 1 Lafayette Road may be appealed, but whether it is or not he does not know. A. Dittami proposed the following specific language to be added to the minutes: *“This meeting and public hearing was video recorded and saved. In order to make the minutes more complete and more understandable that video recording is hereby referenced and incorporated into the minutes of this meeting and the cases heard during this session by reference.”* R. Webb suggested that the ZBA may want to ask the Land Use Attorney if the proposed additional language was legal to add to the minutes. A. Dittami responded that he thought that would be a poor waste of the legal funds that the ZBA has. He continued that it is not up to the Land Use Attorney to put our minutes together, it is their responsibility to defend them, and there is no prohibition from doing it.

MOTION: To approve the meeting minutes from 10/27/2022, adding that *“This meeting and public hearing was video recorded and saved. In order to make the minutes more complete and more understandable that video recording is hereby referenced and incorporated into the minutes of this meeting and the cases heard during this session by reference.”*

MOTION: J. DELEIRE

SECOND: A. DITTAMI

5-YES, 0-NO, 1-ABSTAINED; MOTION PASSED

E. OTHER BUSINESS: There was no other business.

F. COMMUNICATIONS TO BOARD MEMBERS:

1) Proposed 2023 Application Deadline Dates: Planning Board and Zoning Board of Adjustment. The decision was made to change the 2023 ZBA December meeting date from December 21 to December 14, 2023. The Assistant Administrator will adjust the deadline dates for that meeting accordingly.

MOTION: To approve the Proposed 2023 Application Deadline Dates for Zoning Board of Adjustment, as amended.

MOTION: J. DELEIRE

SECOND: P. YOUNG

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G. ADJOURN

MOTION: To adjourn the Zoning Board of Adjustment at 8:00 PM.

MOTION: J. DELEIRE

SECOND: A. DITTAMI

UNANIMOUS

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, December 15, 2022, at 7:00 PM at Hampton Falls Town Hall.

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