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| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

A. CALL TO ORDER

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

B. ROLL CALL- ZONING BOARD OF ADJUSTMENT

5 PRESENT: John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Mark Call, Alex Dittami, Members; James Hasenfus, Alternate.

2 ABSENT: Scott Almeda, Member; Patricia Young, Alternate

2 NON-VOTING: Mark Sikorski, Building Inspector; Rachel D. Webb, Town Secretary.

3 Guests: Russ Hilliard, Jr. and Connor Walsh, co-owners of Swell Oyster Bar LLC; Christopher Raymond, Civil Engineer

The Chairman stated that they would take the Reorganization of the Board on the agenda after the Public Hearing.

C. PUBLIC HEARING

Case # 22-01: Application from **Russ Hilliard, Jr., Swell Oyster Bar LLC** for a Variance to the terms of Zoning Ordinance Article III, section 5.1.2 and asks that said terms be waived to permit proposed parking with associated restaurant, in Zone TCD: Town Common District, at property located at **67 Lafayette Road, Map 8, Lot 92.**

Applicants Russ Hilliard Jr. and his business partner Connor Walsh introduced themselves as co-owners of Swell Oyster Company located in Hampton Harbor NH. Russ Hilliard stated that he is a Hampton Falls native and still lives in town, and Connor Walsh lives in Exeter with his family. They started their company in 2017, and still are the first and the only Oyster Farm located in Hampton Harbor. For the past year-and-a-half they also operate a small retail shop, located in Hampton Harbor, where they sell their oysters direct to the public along with some other seafood-related items. They are very proud of what they have been able to accomplish with their business, and they are ready to take their next steps to open a full-service restaurant.

R. Hilliard, Jr. stated that the Variance they are seeking is regarding Zoning Ordinance Article III, section 5.1.2 which states that: “ *Parking lot locations as required by new development or use within the Town Common District shall be limited to the side and rear of a lot.* ” Their proposed Site Plan showed a few parking spaces that align along Route 1/ Lafayette Road which are the spaces in question for the Variance application. The reason the Site Plan was proposed with that layout was due to the Wetlands Setbacks that have made the developable lot extremely narrow into a rectangular shape, coupled with the large amount of road frontage (545 feet), have made it impossible to design a parking lot that would only utilize the rear and the side of the lot, while providing adequate parking for a full-service restaurant. The applicant believes that the granting of the Variance would allow them to operate a full-service restaurant and to benefit the patrons of town, and would promote economic growth, help create jobs, make good use of an otherwise underutilized lot, and allow for a growing sustainable business to operate at that location in Hampton Falls.

| | |
|----------------------------|------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

The applicant reviewed the Five Requirements for Granting a Variance in terms of their application, as follows:

- 1) Explain how the variance will not be contrary to the public interest. *“The proposed use is allowed by right, however the lot shape and setbacks do not allow for appropriate parking to not be located on the front and side of lot.”*
- 2) Explain how the spirit of the ordinance is observed. *“The ordinance allows for a restaurant. However, the developable lot does not allow for adequate parking without the use of the front and side of the lot.”*
- 3) Explain how substantial justice is done. *“This Variance will allow a full-service restaurant, as allowed in the Town Common District, with adequate parking which in return will provide economic growth within the local economy of Hampton Falls.”*
- 4) Explain how granting a variance would not diminish the values of surrounding properties: *“The granting of a Variance would allow for a full-service restaurant, as allowed in the Town Common District, to exist, which in return will promote economic growth in downtown. It will allow for a local, sustainable business to develop on an underutilized lot.”*
- 5) Describe the special conditions that exist such that literal enforcement of the provision of the ordinance results in unnecessary hardship: *“To limit the development in the proposed lot and to preserve the surrounding resources on site, parking to support a full-service restaurant within the developable lot on site will need to be located on the front and side of the site. Literal enforcement of the ordinance would not allow for the development of the property.”*

J. DeLeire asked the applicant for clarification that without the Variance it would be impossible to put the restaurant and the parking lot on the site. R. Hilliard Jr, responded that the way the ordinance is written, his understanding is that all parking would need to be in the rear of the building. If that is correct, then because of the shape of the lot, and the amount of road frontage, and to meet the minimum parking requirements for the restaurant, they would have to create a restaurant building that was very long and skinny parallel with Route 1 / Lafayette Road. He was not certain that that building configuration would be in the best interests of the town, in terms of how it would look.

The additional building being proposed for the lot would house additional restaurant equipment, such as walk-in coolers for extra storage of oysters (oysters take up a lot of room, need a lot of space).

There are a total of sixty-six (66)-parking spaces proposed, with fifteen (15) of those parking spaces abutting Route 1/ Lafayette Road. The applicant conveyed that the section of the Zoning Ordinance Article III, section 5.1.8 regarding Off-Street Parking Requirements for *“Eating Places, Serving Food or Beverages”* spells out the calculations to compute the required parking, in terms of number of employees, tables and square footage of function rooms not designed for eating.

| | |
|-----------------------------------|-------------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

The restaurant is proposed to have 120-seats, that would calculate 54-parking spaces according to the ordinance, that includes spaces for employees. They are proposing eleven (11)-parking spaces more than the minimum required by the Zoning Ordinance.

A.Dittami questioned the location of the septic system, and the applicant indicated the proposed site of the septic system is generally located in the northeast corner of the Site Plan but it is still being designed and its location is not final. A. Dittami questioned the proximity to the 100-foot wetland setback, and the applicant responded that the location will be specified by the septic design engineer as part of the Planning Board review. A. Dittami asked if the septic location were to change, would it affect the parking layout, and the applicant said that it might affect a few parking spaces, but that the septic would not need to go in the middle of the parcel. A. Dittami asked when people park along the street, where are they going to walk, and the applicant responded that the customers would walk in the driveway and there is a walkway in the center. A. Dittami asked if the applicant had taken into account the existing number of traffic accidents on the hill and traffic cueing, and how this proposed use could promote safety on Route 1 / Lafayette Road. A. Dittami did not have a problem with the number of parking spaces proposed, but rather their configuration on the site. R. Hilliard, Jr. responded that the proposed parking lot layout is a loop, so there may be adequate traffic back-up capabilities on-site. A. Dittami said he would be in favor of the applicant moving the building up from the southeast corner of the site to the western edge of the site to be on the street front, with parking behind the building.

M. Call asked R. Hilliard Jr., what was their rationale for putting the restaurant in the back corner of the lot, and not closer to Route 1 / Lafayette Road. Christopher Raymond, Civil Engineer said that he had some questions regarding interpretation of the Zoning Ordinance, specifically at what point within the site are they not along frontage, so if they push the building to the front, then are the parking spaces abutting the street still considered along the front of the lot, or are those parking spaces considered along the side of the building. He continued that the way the ordinance is written, there is no parking allowed along the frontage. The parking along the frontage would still be along the frontage, but it would also be considered along the side of the building so that is the question on which they were looking to get clarity. A. Dittami raised another question about whether there may be required two driveway entrance/exit points, and M. Call responded asking if that was a Zoning Board issue or a Planning Board issue.

J. DeLeire stated that it is valid for the ZBA to consider those various types of information, such as: septic location and traffic egress/ingress, but the ZBA is not the board to design the Site Plan. It would be the Planning Board that would decide if the applicant needed to have two entrances or one, where you funnel the traffic on and off, and what type of sidewalk you are going to have, those topics are not for the Zoning Board to decide.

J. DeLeire asked M. Sikorski for clarification on the interpretation of the Zoning Ordinance 5.1.2 that states the “*parking shall be limited to the side and rear of a lot*”, and if there is no parking in front of the building, would parking along the side of the building, that is also along the frontage be considered to the side of the lot and satisfy the ordinance. M. Sikorski responded that his understanding of the intent of the Town Common District was to create a streetscape of

| | |
|-----------------------------------|-------------------------------|
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| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

structures, like you would see in a downtown, so that to visit those structures you would travel down an alley in between two buildings, park behind the buildings, walk to the front entrance areas and then walk among the storefronts to create a village atmosphere. M. Sikorski continued that when R. Hilliard Jr. originally met with himself and G. Coppelman, Circuit Rider Planner with RPC, the proposed building was located toward the rear corner of the lot to take advantage of the vistas to the river and this left most of the parking in the front, which is why they wanted the applicant to come to the Zoning Board to get clarity on this parking requirement 5.1.2 to aid in his design when he gets to Planning Board.

J. DeLeire commented that it seemed as though the ordinance was written to accommodate lot shapes with narrower frontage than this lot, to result in parking behind the buildings. A. Dittami suggested locating the building in the front center of the lot to address traffic safety and aesthetic issues. He shared that in 2014 he, himself, wanted to purchase the property to develop it as several residential condominiums with parking underneath, and at that time the State DOT wanted two ingress/egress locations for the lot. Additionally, A. Dittami added that the State is always talking about wanting to widen Route 1 / Lafayette Road, so that should be taken into account when siting the buildings' locations, to set them back far enough in case the road widening ever is implemented and/or accommodate NHDOT's request for a 12-foot-wide easement along the frontage.

M. Call asked the applicants if there has been any specific review to determine single access or double access, and the response was no traffic review has yet been completed. J. DeLeire said that they probably have not yet spoken with NH DOT, as that's part of the Planning Board review process, and the applicant confirmed J. DeLeire's statement as correct.

J. DeLeire clarified the Zoning Board's job is not to grant something for aesthetic reasons, their job is to grant something to help with relief from the ordinance. Is there something that has forced the applicant to propose this design, that if they were able to accomplish this relief that they would not be able to move forward in some way. S. Bryant added the question if the applicant could show that their proposal could provide equal and commensurate safety as that required by the town, and suggested that the applicant may want to consult with NH DOT to get their input.

C. Raymond said that locating the parking was the challenge because of the way the ordinance was written, and whether all parking had to be located or screened by a building so as to not be located in the front of a building. Due to that challenge of interpretation, they were not sure how best to move forward. S. Bryant said that they were understanding what would be helpful to show a couple of scenarios to have traffic impacts of each of those scenarios to be able to say that one is better/safer than the others, or alternatively, that site layout has little bearing on traffic safety given the trip generation of a 120-seat restaurant.

J. DeLeire asked the applicants about their earlier comment that literal enforcement of the ordinance would result in a long, thin/skinny building parallel with Route 1 / Lafayette Road that

| | |
|-----------------------------------|-------------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

would block all of the parking behind. C. Raymond responded that that scenario was in compliance with the ordinance parking requirement of no parking along the front.

There has to be some sort of rational basis for the Zoning Board to make the determination that there is some type of hardship that causes the applicant not to be able to move forward with the building in the front. J. DeLeire asked if there was a proximity to the river issue for water purposes for the oysters, for example, or if there was some data that could be provided to make the decision process more straight forward.

C. Raymond said that the applicants could absolutely provide traffic counts and traffic safety data, but they were really looking for a clarification of the Zoning Ordinance.

S. Bryant asked if the septic design location might alter the location of some parking spaces, and the Engineer responded that if it did, it would not affect any parking spaces near the front of the lot, where they were seeking clarification of the Zoning Ordinance.

M. Sikorski said that the applicants have met with him and the Planner on several occasions over a period of six or seven months, and that this plan is the plan that the applicants want to bring to Planning Board. At Planning Board all of those intricacies will get worked out, such as: the entrances, what NH DOT approves, the locations and numbers of parking spaces, how many will be handicapped parking spaces, where the landscape buffers will be located between the neighboring properties, etc. This is the plan that the applicants want to move forward, not a plan with the building in a different location, so the Zoning Board needs to review this proposal that is before them.

C. Raymond said that the hardship of this property is the substantial amount of frontage coupled with the zoning requirement of no parking along the front of the lot. J. DeLeire said that the lot has wetlands setbacks, and the applicant confirmed that approximately 50% of the lot is wet, and that that is a constraint or physical hardship of the land. The total size of the land parcel is a five-acre site, with the rear and south sides unbuildable due to wetlands. The rear setback is approximately 300-feet to the wetlands buffer. The entire buildable section of the parcel is along the road frontage.

J. DeLeire explained to the applicants that they can, at any point during the meeting, ask the Zoning Board for a “*Continuance to the ZBA’s next meeting, May 26, 2022*”, to allow themselves time to gather additional information, thereby continuing their application another month. They could do that now, or they could do it after they have heard all of the comments from the Public tonight, it is up to them to decide.

Bev Mutrie, Brown Road, owner of the property, said that the property is owned by her, that her husband bought it in 2005/2006 and had it approved by Planning Board for twelve (12)-condominiums. There was an easement from NHDOT to take twelve (12)-feet along the frontage of Route 1 in case they wanted to widen the road. B. Mutrie stated that she was on the Planning Board for twelve-years, and she was Chair of the Ordinances and Regulations Committee that proposed this change to the ordinance because the frontage requirements changed for the

| | |
|-----------------------------------|-------------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

minimum frontage of the lots in the Town Common District to 80 or 85-feet , not the 250-feet of frontage in most of the rest of town. She described that the vision was that the Town Common District would become more like the Town of Hampton Center, with buildings and sidewalks lined-up along the street, and parking along Route 1, to allow pedestrians to shop. Unfortunately, this property has a very long frontage, and unless the property is going to be subdivided into smaller lots there is no reason to limit where the parking is because there is no requirement to save space to line-up the buildings along the frontage. So, the change to the ordinance was driven by the reduction in the amount of frontage required for the front lot line.

David Frolio, Rye, NH, expressed his admiration for the passion of the Zoning Board members committed to discussing these issues on a volunteer basis at the late hour. He continued that he thought the discussion about traffic safety and aesthetics, while interesting, really was out of the realm of the application before the Board. He stated that the applicants are trying to follow the rules, and the rules are not clear, and it is apparent that there is ambiguity within the regulations.

Mike Stan, Meadow Lane, abutter is concerned about the safety of the ingress and egress from the site on Route 1 / Lafayette Road.

B. Mutrie, Brown Rd, owner of property, wondered if the State DOT would consider their 12-foot-wide easement as a turning lane, and A. Dittami responded that he thought the State DOT would consider that scenario.

A.Dittami went on to discuss regional trail initiatives of the Rail-to-Trails organization and the Rockingham Planning Commission (RPC) where some ideas are under discussion to introduce a bike path along Route 1.

B. Mutrie, Brown Rd, owner of property, stated that with her husband's approval process for the site, that the State DOT was adamant about receiving their 12-foot-wide easement as a condition of, or prior to, issuance of a Driveway Permit. A. Dittami added that his experience with that site and NH DOT was that they had required a second entrance from Route 1/ Lafayette Rd.

MaryAnn Hill, Exeter Rd, Chairman of Conservation Commission, asked the question: why does there have to be two (2) buildings, and the applicant responded that one is the restaurant, and the second building is to store oysters because they take-up so much space. Their business is an Oyster Farm business, and then they will have the separate restaurant business, so the Oyster Farm business will supply the restaurant.

Mike Stan, Meadow Lane, abutter asked what material the parking lot surface will be, and the response was crushed stone and crushed oyster shells that are permeable. M. Stan followed-up with a question about lighting, and the applicants responded that they will address that question at Planning Board; that they were present tonight to discuss the subject before the ZBA, B. Mutrie offered that the ordinance requires down-lighting, that will be addressed at Planning Board.

| | |
|----------------------------|------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

The applicant requested a continuance to the next ZBA meeting May 26, 2022.

MOTION: To continue Case # 22-01 to the next ZBA meeting May 26, 2022.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 12/16/2021

MOTION: To approve the meeting minutes from 12/16/2021, as written.

MOTION: S. BRYANT

SECOND: M. CALL

UNANIMOUS

E. REORGANIZATION OF THE BOARD

1. Nomination and Election of Chairman

MOTION: To nominate J. DeLeire to continue to serve as Chairman of the ZBA.

MOTION: S. BRYANT

SECOND: A. DITTAMI

UNANIMOUS

2. Nomination and Election of Vice-Chairman

MOTION: To nominate M. Call as Vice-Chairman of the ZBA.

MOTION: A. DITTAMI

SECOND: S. BRYANT

M. Call declined the nomination as Vice-Chairman.

MOTION: To nominate S. Bryant as Vice-Chairman of the ZBA.

MOTION: J. DELEIRE

SECOND: A. DITTAMI

UNANIMOUS

3. 2022 ZBA Members' Listing, confirmation of Contact information.

All of the members confirmed their contact information was correct.

F. OTHER BUSINESS

A.Dittami discussed the conclusion of the Route 1 Corridor Study Plan completed in April 2022 by the State and VHB, which resulted in the Board of Selectmen stating that nothing would be done to widen Route 1 that would affect the Town Common in Hampton Falls. A. Dittami continued discussing some of the additional proposals of the study that included an alternate perspective that if not widening Route 1 to speed-up the traffic, that another perspective is to slow the traffic down, as a technique to improve retail opportunity by the use of incentives for development through zoning. There are other community's Zoning Ordinances (such as Cambridge, MA and Martha's Vineyard, MA, among others) that include incentives for development by enacting a type of Overlay Zoning District where the Town has previously defined the type of development preferred for a certain area. He described this type of overlay

| | |
|----------------------------|------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

zoning as not being the typical Historical or Retail zoning, but rather containing a mix of goals for how the area should look and ideally develop, together with incentives for property owners to develop the parcels according to the goals specified by the Town.

Another subject A. Dittami spoke about was future development of the Rail Trail, with potential development of “Trail Heads”, or access points, at the ends of Brimmer Lane and at Depot Road. Trail Heads typically include parking spaces and bathrooms. In Hampton Falls the ability to make connections to the town’s Scenic Roads will be important, as will the consensus of the community in support of these plans. The Rails-to Trails group has requested a meeting (in addition to the possibility of having successive meetings, with the same people) with representatives of the various land use boards in town, and the Selectmen, to which they will have in attendance representatives of the (1) Rails-to-Trails group, (2) RPC Rockingham Planning Commission, and (3) the NPS National Park Service.

A. Dittami additionally presented information regarding the presentation to the Planning Board earlier in the week, by Dave Walker of RPC on the subject of Seacoast Transportation Corridor Vulnerability Assessment and also Coastal Hazards Adaptation and Resiliency Efforts addressing sea-level rise in the NH coastal region. A. Dittami said that when the Planning Board asked the RPC what Hampton Falls should do about it, the response was that in the short-term to just be aware of it; however, in the longer-term there are two items of interest, namely a Vulnerability and Risk Assessment Study to identify areas susceptible to flooding in terms of risk assessment to businesses and residents in those areas, and the second item is a hydro-dynamic coastal flooding model that will be available in 18-months to help better understand the dynamics of wave, wind action and currents on the impacts of sea-level rise in the Hampton Estuary.

J. DeLeire asked A. Dittami if he, himself, felt comfortable being the representative from the Zoning Board to sit-in on the meetings about the Rails-to-Trails, and he said that he would rather not because he already is planning to participate as Chairman of the Depot Road Subcommittee of Parks and Recreation Commission (DRSPR), and that it would be clearer to have separate representatives. J. DeLeire said that perhaps it is more appropriate to ask Karen Anderson, Town Administrator to get her approval and to address the request, to see how the Selectmen would like to handle it.

S. Bryant said that today’s meeting was a bit challenging for him because there clearly is an issue that the Zoning Board needs to address, regarding the zoning ordinance that was not fair to the applicant, and was also not fair to the Zoning Board members to have to interpret the zoning ordinance language on the spot. His sentiment was that the writing was not as clear as it needs to be, and he asked what is the correct governing body to correct it. B. Mutrie said to request the Ordinance and Regulations Committee of the Planning Board to address the concern. A. Dittami said that the Zoning Board could request that Town Counsel review the subject and propose a solution. (R. Webb offered the information that the Land Use Attorney used by the Town is retiring June 30th, 2022, and there is currently a search process to identify a replacement asap.)

| | |
|-----------------------------------|-------------------------------|
| ZONING BOARD OF ADJUSTMENT | April 28, 2022 7:00 PM |
| TOWN OF HAMPTON FALLS | TOWN HALL |

FINAL

S. Bryant said that he did not feel as though that solution was in the spirit of helping the residents accomplish their goals, and of no fault of theirs, this was a challenging interpretation, and he felt as though the Zoning Board was not helpful to the applicants. S. Bryant further offered that the applicants could make some modifications to their Site Plan, so that they would not need to come back to the ZBA, and instead they would go straight to the Building Inspector to get on the Planning Board's agenda, but then the same interpretation discussed tonight would be on the Building Inspector. S. Bryant re-emphasized his point that the ZBA needs greater clarity with the ambiguity of this particular definition and section of the ordinance (Article III, section 5.1.2).

MOTION: To close the Public Hearing.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

G. COMMUNICATIONS TO BOARD MEMBERS. There were no communications.

H. ADJOURN

MOTION: To adjourn the Zoning Board of Adjustment at 9:15 pm.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

The next meeting of the Zoning Board of Adjustment is scheduled for Thursday, June 23, 2022