

ZONING BOARD OF ADJUSTMENT	June 22, 2023 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 2 ALTERNATES PRESENT: John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Mark Call, Member; Jamie Hasenfus, Alternate; Alex Dittami, Alternate

4 ABSENT: James Manna, Member; Patti Young, Alternate; Jude Augusta, Alternate; Weezie Vance, Alternate

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

GUESTS: Seamus McGuire, owner of 87 Lafayette Rd Units 12-16; John Chagnon, Engineer, Ambit Engineering.

Chairman DeLeire stated that there were five voting ZBA members present.

C. PUBLIC HEARING:

1) Case # 23-05: Application from **Seamus McGuire**, for a Special Exception as provided for in Zoning Ordinance Article III, Section 4, to allow Medical Offices and Clinic (outpatient only), in Zone TCD: Town Common District, at property located at **87 Lafayette Road, Units 12-16, Map 8, Lot 87-1.**

Mr. Seamus McGuire introduced himself as a Hampton Falls resident and a Doctor of Physical Therapy. He stated that he and his wife, Hillary who is a Nurse Practitioner, purchased 87 Lafayette Road, Units 12-16, the old Edgerly Farm building, at the end of the summer last year (2022). They purchased the building because they liked the location, the facility, and there seemed to be enough space for a Physical Therapy clinic, while maintaining the character of Hampton Falls. He further described the building as the former *Lighting By the Sea* building. He praised the former owners in keeping up the character of the building and said that they plan to the same.

S. McGuire stated that, in his experience, that Hampton Falls was uniquely suited for a physical therapy location. Hampton Falls has a very active population, with residents ten-years older than the median for the US. S. McGuire continued that the Town Common District (TCD) is well-suited for a Physical Therapy medical use due to the frequency of treatment necessitated either from follow-up from a surgery or an injury, unlike other medical office uses that may be annual appointments. He cited the example of a knee replacement surgery where the client would go see their doctor five (5) times, followed by potentially thirty (30) PT visits, and that would be good in the middle of town, easily accessible to most residents for visits that may be scheduled 2-3 times per week.

S. McGuire presented that their business would provide Physical Therapy in addition to Personal Training by another Hampton Falls resident, Zac Warnaky. He said that this combination would

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provide a central hub for people to stay active and meet their physical goals. He said that some people would come from locally, but others may come from out of town. He said that clients could have a frequency of visits 2-3 times per week, or simply 2 or 3 times. He stated that there was the possibility that people would visit and see what a nice place Hampton Falls is, and want to return, as this was his experience with his current location out-of-state. He anticipates the new business to be an asset to the town, and to the businesses at Shoppers Village.

S. Bryant asked a question regarding medication management, if there was planned any administration of drugs, and S. McGuire responded no prescribing license is held by staff, so they handle those issues by referral.

S. McGuire introduced his engineer John Chagnon of Ambit Engineering, saying that he would address issues of parking, septic and water on site. J. Chagnon distributed copies of a proposed Site Plan for the site to all ZBA members for consideration. He stated that it is fairly non-descript because nothing is really changing about the site at all. He said that the site is located at the corner of Route 1 and Depot Road, best known as the "Lighting Center". He stated that the building is prominent at the corner with one entrance off Lafayette Road and two entrances off Depot Road. J. Chagnon further described the site as having a separate building in the back, and that the entire site is a condominium form of ownership. Chairman DeLeire asked for clarification of the ownership. S. McGuire stated that he owns the entire building where the Lighting Store was located, and within that building there are two (2) additional spaces that they plan to lease to other businesses, so his Physical Therapy business would be occupying one-third of the building.

M. Sikorski clarified that the application before the ZBA was for a Special Exception, and not a site plan application, so the level of detail of the site plan really was for the Planning Board site plan application, and not relevant to the question of a change of use application before the ZBA. A. Dittami said that there was a list of five (5) criteria that needed to be met for a Special Exception. Chairman DeLeire asked the applicant to please address the five (5) criteria of the Special Exception, in terms of their application:

A) Explain how the requested use would be essential or desirable to the public convenience or welfare. The applicant had previously addressed this criteria, earlier in his presentation.

B) Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety. J. Chagnon stated that the proposed change of use is markedly like what was there previously, as the Lighting Center was a destination and people came to the site, and shopped, and left. J. Chagnon said that the proposed use will not increase traffic.

C) Describe how the requested use would not overload any public water, drainage, sewerage system, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety, or the general welfare. J. Chagnon stated that the site is serviced by utilities, and he indicated a chart on the Site Plan was prepared to detail how the proposed

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change of use will still be in conformance with the approved septic system. He stated that the approval for the septic system was sometime in the 1980s and he has listed all the tenants and their water use, and how this proposed use is not going to unduly burden that septic system. J. Chagnon continued that the owner has gone out of their way by placing a meter on the existing well to ensure that the system is not overloaded.

In determining whether to grant a special exception, ... the Zoning Board shall find that:

- 1) There is no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. The applicant stated that there is nothing within his practice that would create any of those hazards.
- 2) There is no detriment to property values or changes in the essential characteristics of residential or surrounding neighborhoods on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials. J. Chagnon stated that there is no proposed construction. There is going to be a change to the exterior sign going from the Lighting Center to Physical Therapy, so there will be no impact to either property values or surrounding neighborhood peace and enjoyment.
- 3) There is no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. The applicant stated that the impact to traffic is fairly comparable to the former use. What he liked especially about the parking onsite is the handicapped parking space up front, for patients coming in to physical therapy.

M. Call asked what the applicant's vision is for his business growth at that location? The applicant responded that the facility maxes out at a total of three (3) physical therapists. He said that it is not a parking constraint but the square footage within the building. He continued that the personal training component maxes out their space before the physical therapy. He said that he did not see his practice growing beyond three (3) physical therapists, because if they did, then they would need to change the exterior of the building, which is not in the plan at all.

M. Call continued asking if the personal training is an open gym, and how does that work as related to the physical therapy? The applicant explained that the benefit of having both the physical therapy together with the personal training is that insurance covers the patient's physical therapy to a certain point (to walking, for example), and then the personal training can continue the training afterwards (to hiking, from walking). He said that the personal training will not be a membership facility, it will be a one-on-one or one-on-two facility. He stated that their maximum would be three (3) physical therapists and two (2) personal trainers.

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S. Bryant asked about hours of operation for both businesses, and the applicant responded that the physical therapy may open at 7:00 am to give working people a chance to come before work, and the personal training may start at 6:00 or 6:30 am, earlier than the physical therapy. He said that J. Chagnon calculated the parking on-site that there would potentially be 14.8 parking spots available for them to utilize if needed. He said that because their use is primarily one-on-one, that their utilization of parking may be less than what is available.

A. Dittami asked how many administrative staff does the applicant anticipate, and the response was probably just one (1) directing people either to the Physical Therapy in the carriage house area or to the Personal Training in the front area.

Chairman DeLeire asked for clarification about the change in use being requested, given the two (2) components of the proposed business, and Building Inspector's case review memo that stated that *"any future tenants that might be included in this (medical outpatient) definition of use would need to apply separately."* The applicant's response was that the Special Exception was needed for the medical, out-patient, physical therapy, but not for the personal training. S. McGuire continued that if he leased out the other two (2) units to either a massage therapist, an acupuncturist, or to a nutritionist, that none of those uses fall under the medical definition so they would not need to obtain a Special Exception. S. Bryant asked if the applicant's wife, a Nurse Practitioner, wanted to bring her practice to join the business, and the applicant responded no, that was not the plan.

- 4) *There is no excessive damage on municipal services, including, but to limited to, water, waste disposal, police and fire protection and schools.* A. Dittami asked what is the likelihood of an increase in Ambulance runs to the location, and the applicant responded that, in his experience, there are on average approximately 3-4 hospital calls per year, and S. Bryant said that it is immensely rare, in his experience.
- 5) *There is no significant increase of stormwater runoff onto adjacent properties or streets.* J. Chagnon stated that the applicant is not changing anything about the site, there will be no impervious surface changes, so there will be no change to stormwater runoff.

PUBLIC COMMENT:

Alan Dickerson, the former owner of the building spoke in favor of the proposal. He stated that it was his opinion that the proposed use would be a good evolution of the building. He said that in the 1990s and early 2000s he had up to ten (10) employees in that location, but that now retail is challenging in bricks and mortar locations due to people buying online. For that reason, he stated that it would not be a good idea to refill that space with another retail use. He described how when the location originally opened in 1982 that it was 100% retail, and then by the early 2000s it became approximately 50% offices with 50% retail. He said that there is one (1) remaining retail use onsite that is the Antique business. He suggested that the Town consider potentially rezoning that location to allow for medical use in retail space so that Special Exceptions would not

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be necessary. S. Bryant said that the medical outpatient use is not excluded by the zoning, but requires an explanation through the Special Exception application process.

Chairman DeLeire closed the Public Comment.

M. Call asked for clarification about the Building Inspector's Case Review Memo that referenced the "*Circuit Rider Planner*", and M. Sikorski explained that Glenn Coppelman is a contracted consultant with the Town for planning services through the Rockingham Planning Commission (he works with the Hampton Falls Planning Board). The job title "Circuit Rider Planner" is a reference to the fact that people in that position often work with more than one town simultaneously, and thus "ride the circuit" between their contracted towns, providing plan review services. M. Call followed-up asking if the Planning Board has yet weighed-in on this application, and M. Sikorski responded no, that ZBA was the first step, and if approved by ZBA, then the applicant will proceed to Planning Board for Site Plan Review next month.

Chairman DeLeire stated that he thought the proposed use was a reasonable use, and that the applicant addressed all the criteria. He said that the former lighting store was very busy. The Town would gain from having the taxes from an active business in that location.

S. Bryant had no concerns with the application.

MOTION: To approve Case # 23-05: Application from **Seamus McGuire**, for a Special Exception as provided for in Zoning Ordinance Article III, Section 4, to allow Medical Offices and Clinic (outpatient only), in Zone TCD: Town Common District, at property located at **87 Lafayette Road, Units 12-16, Map 8, Lot 87-1.**

MOTION: M. CALL

AMENDED MOTION: To incorporate all testimony and materials presented as part of the ZBA application this evening. To limit the change in use to Physical Therapy, being requested.

MOTION: J. DELEIRE

SECOND: A. DITTAMI

UNANIMOUS

D. COMMUNICATIONS TO BOARD MEMBERS:

E. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 05/25/2023

MOTION: To approve the meeting minutes from 05/25/2023 as written.

MOTION: S. BRYANT

SECOND: M. CALL

UNANIMOUS

F. OTHER BUSINESS:

A.Dittami distributed copies to all ZBA members present of *NH RSA 674:33* regarding the *Powers of the ZBA*, as listed in the Handbook of Authority of ZBA. He stated that even though

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Chairman DeLeire has raised cautionary advice regarding enacting this statute in the review of applications before the ZBA, A.Dittami urged the ZBA to consider their authority to expand or to contract their authority, as detailed in the RSA, with discretion. S. Bryant said that if there was a hypothetical Variance application before the ZBA, and in the course of deliberations the ZBA determined that the application would be more appropriate as a Special Exception, then they could continue the application to the next meeting to allow for re-noticing as that different type of application, if the applicant was in agreement.

H. ADJOURN

MOTION: To adjourn the Zoning Board of Adjustment at 7:40 PM.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, July 27, 2023, at 7:00 PM at Hampton Falls Town Hall.

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