

ZONING BOARD OF ADJUSTMENT	February 23, 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 4 ALTERNATES PRESENT: John DeLeire, Chairman; Steve Bryant, Vice-Chairman; Member; Alex Dittami, Member; Jamie Hasenfus, Alternate; Weezie Vance, Alternate; James Manna, Alternate; Jude Augusta, Alternate.

2 ABSENT: Mark Call, Member; Patti Young, Alternate.

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

GUESTS: Justin Pasay, Donahue, Tucker & Ciandella, Attorney for the applicant; Mark DePiero, Applicant; Henry Boyd, Millennium Engineering; Sergio Bonillo, Mission Wetland & Ecological Services.

Chairman DeLeire stated that for the purposes of this ZBA meeting, the Alternates voting will be J. Hasenfus and W. Vance.

C. PUBLIC HEARINGS:

1) Case # 23-02: Application from **5 Kensington, LLC** for **Appeal of Administrative Decision**, alleges that the Building Inspector has made an error in the decision, determination, or requirement on 10/17/2022, to 5 Kensington, LLC, in relation to Article III, Section 9.3.24, and Article III, Section 13.3.14 of the Zoning Ordinance and hereby appeals said decision, which the applicant believes was made in error, for property located at **5 Kensington Rd (Map 8 / Lot 22)**.

J. Passay, Attorney for the applicant, started by saying thank you, as it has been a long process that began in the Fall of 2021, when the applicant M. DePiero started working with J. Passay and H. Boyd and S. Bonillo in a very painstaking and deliberative process that resulted in the plans and the expert analysis before the ZBA tonight, that are the product of very thoughtful consideration of how the property could or might be developed. He thanked M. Sikorski and Glenn Coppelman of RPC for being available and helpful in meeting with them throughout the process. J. Pasay acknowledged some delays in their process and summarized the procedural path they have taken to date. In August 2022 they filed a Subdivision application, along with a Wetlands Special Use Permit application with the Planning Board. Then there was a question raised by a local citizen about whether wellheads constitute a structure under the Zoning Ordinance. The applicant requested an interpretation from the Building Inspector, M. Sikorski in October 2022. The interpretation was issued. Then in November 2022 the applicant appealed the interpretation of the Building Inspector to the ZBA. After that time, until now, the applicant M. DePiero has had some medical issues which have delayed the application to tonight. In the interim, the applicant filed a Variance application as an alternate form of relief, in case the ZBA votes to uphold the Building Inspector's interpretation, then the applicant will pursue the Variance application utilizing the same background information, at the same meeting.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

J. Pasay briefly described the components of their application which included:

- a legal narrative,
- a wetland report. The wetland report included the nature of the wetlands on the property, the proposed impacts particularly the impact (or lack of impact) caused by the 12-inch diameter wellhead, the very robust mitigation plan, with the net result of the project being a site that is far better aligned with the purpose of the wetlands conservation district because the project is going to enhance the function values of the wetlands on the property, and on the overlay district in general.

- engineering plans,
- State wetlands and State subdivision approvals

Chairman DeLeire asked if the State has reviewed the plan for three (3) well heads, and also the plan for one (1) wellhead, and J. Passay responded that the State has not yet seen the plan for just one wellhead, but they would go back and obtain State review as part of the applicant's review process.

J. Pssay presented that generally, the project is a proposed three (3) lot subdivision, with minor wetland impacts and particularly the driveway for Lot 3, although the applicant is not before the ZBA to discuss wetland impacts within the setback areas, as that decision will be made by the Planning Board March 28, 2023, if approved by ZBA tonight. The applicant is discussing with the ZBA the twelve-by-twelve-inch wellhead to be located near the driveway for Lot 3 in an area that will already be disturbed, after approval from the Planning Board. The Building Inspector interpreted that the wellhead is a structure, within the meaning of the Zoning Ordinance. J. Pasay pointed out the irony that the applicant does not need relief for the 12-ft by 24-ft box culvert going through the stream, nor for the utility pipes, but do need relief for a 12 x 12-inch wellhead. He continued that it does not make sense that the pipe that goes into the ground for the well is allowed by Special Use Permit from the Planning Board, but the top of the pipe that is the wellhead sticking out is not allowed.

Chairman DeLeire asked if only one of the three wells was located in the wetland setback? J. Pasay responded that each of the three wells were located within the wetland setback, on the earlier plans, but now they are proposing a single well to be located proximate to the driveway where the land will be disturbed anyway so it makes the most sense, and they are making their appeal based on common sense.

J. Pasay said that the proposal is to advance the purpose of the Town Common zoning district that is characterized by more density, and more walkability. He continued that the project will add value to the housing stock, and it will be a beautiful project. The net result of the proposed impact of a wellhead on the wetland setback will be a project that is much better for the wetland conservation district, and for the overlay district in general, than that property is today because of the mitigation and restoration efforts as part of the project.

A.Dittami asked J. Pasay for the citation within the Zoning Ordinance that allows the Planning Board to grant Special Use Permits under four (4) conditions, and the response was Article III, Section 8.6.1: *A Special Use Permit may be granted by the Planning Board for the construction*

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

of roads and other access ways, pipelines, power lines, and other transmission lines provided that the applicant meets the four (4) conditions listed.

S. Bryant inquired about the difference between horizontal and vertical pipelines, and J. Pasay responded that the law requires to look at the language of the ordinance, and the ordinance does not make a distinction. S. Bryant said that the ordinance is crystal clear and that the only exception in the ordinance is for fences and pilings.

Chairman DeLeire asked if there is any case law regarding the subject of this application? J. Pasay responded that he did not think that there was a case that analyzed this exact, precise circumstance. He cited cases that addressed how do you construe a zoning ordinance when there are seemingly inconsistent provisions. He stated that those cases support his application's ultimate conclusion that: *if pipelines, transmission lines, roads, pilons, boardwalks, docks, fences, and boundary walls are all permitted uses, then the wellhead that sticks out of the ground ought to also be a permitted use.*

S. Bryant asked why the Planning Board sent the application to the ZBA if they had Special Use Permit authority, why didn't the Planning Board grant the Special Use Permit? J. Pasay reviewed the procedural history: the applicant had filed with the Planning Board and never got there, had three or four meetings with M. Sikorski and Glenn Coppelman, had all their submittal materials ready to go, as a result of a very robust due diligence period to ensure accuracy. Two days before the Planning Board meeting August 2022 there was a letter, from a resident submitted to the Town, asking the question: *"aren't wellheads structures?"* The Applicant sought an interpretation from the Building Inspector, who said that the wellhead is a structure, so now they are appealing that interpretation with the ZBA. If successful, then the applicant will go to the Planning Board for Special Use Permits for infrastructure.

A. Dittami asked for clarification regarding the zoning section 8.6 Special Use Permits for transmission lines that cross over wetlands areas horizontally, not structures that are in the wetlands, but structures that transmit power, gas, electricity, and whether the Planning Board has the authority to grant the Special Use Permits. J. Pasay said that A. Dittami was asking two questions, namely, one about the horizontal reference, and one about the Planning Board's authority. J. Pasay continued that it is the authority of the ZBA to determine what a structure is. A. Dittami asked about the Planning Board and whether they had the authority to authorize the well, and J. Pasay said that he believed that they could. A. Dittami said that he thought that the well did not fit the definition of 8.6, and J. Pasay disagreed and said that he believes that a well is a pipeline. He further clarified that the application is for a wellhead in the wetland setback area, not in the wetland.

H. Boyd, Millennium Engineering said that he has worked with the applicant M. DePiero for twenty-five (25) years where he built beautiful homes in West Newbury and Newburyport, and he hoped that the ZBA may have the chance to see some of the homes he has built to know that what he would build in Hampton Falls would be beautiful. He liked the willingness of M. DePiero to meet frequently with the Building Inspector M. Sikorski and the Planner G.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

Coppelman. H. Boyd said that he himself met with M. Sikorski two or three times and the well issue never came up, but he understands the legal issue that needs to be addressed tonight.

H. Boyd presented that the applicant has put a lot of thought into the development of the parcel. The lot has been affected by a fairly recent Innovative Zoning change, which made the size of the lots in this area of town much smaller than the rest of the town where the requirement is a minimum of two-acres. H. Boyd continued that he was happy that the applicant wanted to keep the history of the existing house and barn intact, and keep those buildings looking the same. He said that after his meeting with M. Sikorski he did a lot of work with S. Bonillo, a wetlands scientist. The site is five-(5)-acres, and the intent is to build two homes in the rear of the site, while keeping the existing historic house and barn intact. The applicant uses the barn for woodworking.

H. Boyd said that they met with the State to discuss wetland impacts of getting services (septic and wells) to the two homes in the rear of the lot. After the question by the resident, about the wellhead as a structure, the applicant thought about how to lessen their impact to the wetland setback as much as possible, which is how the concept of a “*small community well*” was raised, instead of three individual wells. The difference in the wellhead radius increases from 75-feet for an individual well, to 125-feet for a community well. He said that the well radius is entirely contained on the parcel, and the septic reserve areas are located in the rear of the lot where there are very good soils. The applicant met with Eben Lewis at the State to discuss the most minimal impact to the wetlands as possible, given the habitats present on site and the need to locate a new shared driveway to service the two new homes in the rear. The applicant agreed to have a very expensive, open box culvert designed to provide the driveway to cross the intermittent stream, while enabling wildlife to pass through the culvert. The result was that the State was very happy with the minimal wetland impact of only 217-sqft. for the driveway.

H. Boyd explained that the disturbance of the land to build the driveway within the wetland setback is allowed without a Variance. He identified the location of the septic system for the Colonial house as being in the wetland area. There is currently 1,552-sqft of filled wetland habitat that comprises the existing septic system for the Colonial house, that may leach into the wetland and travel downstream eventually to Whittier Pond. The plan is to abandon the existing septic system, remove all of the fill, and to restore the historic edge of the wetland, with the result of taking septage out of a wetland.

He explained that the culvert will be installed with footings being the only part striking the ground to allow the intermittent stream to flow. He added that the culvert was designed as if the stream flowed all year and was not an intermittent stream. The stream crossing was located at the narrowest section of the stream, as desired by NH DES. H. Boyd additionally identified an approximate 800-sqft section of Japanese Knotweed, that is an invasive plant species that threatens to take over wetland areas.

Chairman DeLeire asked H. Boyd what the dimension was between the proposed location of the wellhead and the proposed location of the box culvert, and the response was approximately

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

thirty-(30)-feet. Chairman DeLeire asked H. Boyd if he was familiar with the NH Code of Administrative Rules ENV-DW 305.09 that a shared wellhead can not be within fifty-(50)-feet of an intermittent stream. H. Boyd said that he was not familiar with that rule, but if that is what it says then they will have to move the wellhead a little bit more.

M. Sikorski asked the applicant what the name of the type of well they are proposing is called, is it a “*small community well*”? H. Boyd responded that it is allowed to have up to 24,000-gallons. He said that this is the largest allowed well before the next level that is a 200-ft or 250-ft well radius. He said that it is not a *community well* as that requires a 400-ft radius.

S. Bryant asked H. Boyd if the goal was to have community septic as well? The response was no. H. Boyd discussed the existing well on the northern property line that will be upgraded as part of this project.

S. Bonillo stated that he first started working with the applicant in October 2021, and after looking at the site resources and completing the wetlands delineation, he saw that a former owner had maintained the agricultural field in the back with access via two “runners” over the intermittent stream crossed routinely at an estimated frequency of once per month or once every two months. This activity resulted in compaction of the riparian fringe of the intermittent stream, to maintain the agricultural field in the back. The applicant presented to the State that:

- (1) vehicular crossing of the intermittent stream would be discontinued at the former crossing for agricultural purposes;
- (2) the septic system would be decommissioned (previously mentioned);
- (3) restoration of the emergent wetland would no longer be subject to routine impact of agricultural traffic;
- (4) recreating approximately 1,552 sqft of emergent wetland habitat and adding shrubs; and
- (5) the Japanese Knotweed invasive plant species and its seedbank would be eradicated on site, to prevent potential spread of the seed downstream in a Prime Wetland area;
- (6) three Eastern Bluebird boxes will be installed to aid wildlife habitat restoration above and beyond the requirements.

S. Bonillo distributed a one-page comparison of project elements of the proposed impacts of this application compared with the impacts of the adjacent LAS school parking lot expansion and storm water management completed several years ago.

A.Dittami asked the question, how does a well get constructed? S. Bonillo responded that well-drilling equipment drills an auger down into the ground until they hit bedrock. S. Bryant stated that he has witnessed several wells get drilled, and asked how the applicant is going to control the effluent from the drilling process from entering the wetland, such as a significant amount of water throw-off and stone dust from drilling through the rock. The response was the use of sediment bags and dewatering chambers, with contingency plans for crossing the wetlands have been prepared for review by the State and are part of their plans. S. Bryant asked for an explanation of the impact of the entire process of the drilling, and not just the wellhead sticking out of the ground. J. Pasay said that he is happy to explain any part of the process. S. Bryant

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

asked M. Sikorski if the wellhead definition was limited to just that part sticking out of the ground, or if it also encompassed what is below ground, because he would assume it to be all of the piping involved both above and below ground? J. Pasay reviewed the original question posed by the resident: “*is a wellhead a structure?*”, which the applicant then discussed with M. Sikorski and ultimately decided to apply for a decision of interpretation. If a well is a pipeline, and pipelines are allowed by the Special Use Permit, then the wellhead is the surface component of that pipeline. S. Bryant suggested that the zoning ordinance may not distinguish between well and wellhead.

Chairman DeLeire stated that the applicant’s question is very finite as it pertains to the wellhead that sticks out of the ground, what people can see. He continued that often the ZBA is challenged by a set of rules and guidelines that don’t lend themselves to any interpretation but one, and that sometimes the ZBA is asked to change that definition and the ZBA is bound by the writing before them to make a decision. Obviously, the Building Inspector’s determination weighs heavily on the decision-making process of the ZBA in this circumstance. Chairman DeLeire stated that it is difficult to overcome the fact that the wellhead has been called a structure.

A.Dittami discussed the position of the ZBA in this application as stepping into the position of the Building Inspector to either affirm, deny, or amend the prior decision of the Building Inspector. He stated that if a ZBA member asked more broad questions of the applicant, within reason, then those questions are legitimate. J. Pasay stated that the applicant is willing to respond to any questions, but reminded A.Dittami of the application regarding the wellhead, and the decision needed on that question. A.Dittami disagreed saying that if the ZBA decided to broaden the category of the application, that it could decide to do so, and deferred to Chairman DeLeire. J. Pasay said that if the category is broadened by the ZBA then the applicant ought to have the right to respond. Chairman DeLeire agreed that if the ZBA broadened the definition of what the ZBA is investigating in this application, then the applicant should have the opportunity to respond.

J. Augusta asked M. Sikorski if there is any Building Code or NH RSAs specific to wellheads because he sees some sticking out of the ground a good distance, but then his own is flush with the ground, so why are they different, and are there regulations about the differences? M. Sikorski responded that the Building Code says that wellheads need to protrude out of the ground at least eight-inches (8”). The reason for that is that if there is a high water table issue it would prevent ground water from getting into the well. J. Augusta said then it seems as though the wellhead is considered a succinct element to be considered separate from the additional apparatus of the well below-grade.

Chairman DeLeire stated that if the ZBA decides to broaden the category of the question being asked, then the ZBA will give the applicant the opportunity to respond, either at the meeting, or if they need additional time, then (as has been done in the past with previous applicants) a continuance would be granted to enable the applicant the time to respond at a future ZBA meeting.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

M. Sikorski asked the applicant what exactly is the applicant proposing, is it three lots with (3) wells, or is it three lots with one (1) well? H. Boyd explained that there were originally three (3) wells, but then the applicant challenged themselves to attempt to reduce their impact to the wetland setback even more, so they came up with the concept of one (1) wellhead instead of three wellheads. M. Sikorski reviewed the fact that when he rendered his decision on the definition of a wellhead, that the application was for three (3) wells, and that now, it seems that the applicant has revised their application to one well, and is that called a “*small community well*”? H. Boyd said that it is not a “*community well*” that requires a four-hundred-foot (400’) radius, but it is a “*shared well*” and he did not have the State definition at hand to reference.

H. Boyd addressed S. Bryant’s concern about protection of the environment during the drilling of the well, to not harm the wetland resources. S. Bryant reiterated that the wellhead is the last thing to go on top, after all the drilling work is done.

J. Pasay said that there are many people in the room who may want to testify regarding this application. He continued that if there is a jurisdictional question that perhaps the Town’s Land Use Attorney should be consulted. Chairman DeLeire supported that idea. A. Dittami disagreed with the idea to consult legal counsel, because he stated that it was his opinion that enough information had been presented to make a decision regarding the Building Inspector’s interpretation of a well as a structure, and that he believed it was a very simple question. Chairman DeLeire said that it is more complicated than that, as he has questions about the Planning Board’s authority in reviewing these issues. J. Pasay clarified that the applicant simply filed an application with the Planning Board; however, they have yet to go before the Planning Board to present their application.

W. Vance asked M. Sikorski for clarification that when he responded to the request for an Administrative Decision on whether a well is a structure, that he was considering three (3) wells on the site, and M. Sikorski responded yes he wrote his decision based on the applicant’s filing request for three (3) wells. M. Sikorski continued that the number of wells had no bearing on the substance of his decision. S. Bryant stated that it is of more importance to him to know if the applicant is proposing three (3) wells or one (1) well as it impacts the Variance application, if the applicant gets to that stage of the meeting, pending the ZBA decision on the Administrative Appeal. S. Bryant said that he thought it would be an easy decision to make on the case of the Administrative Appeal, and A. Dittami agreed with him.

Chairman DeLeire asked J. Pasay if the applicant wanted a decision on whether to consult with legal counsel or not, and he responded yes. S. Bryant clarified that the attorneys do not make the decision for the ZBA, and Chairman DeLeire agreed saying that it would clarify some of the terms that are currently unclear.

MOTION: That the applicant be allowed to correspond with the Town’s Land Use Attorney to pose questions and to discuss the particular matter within the purview of the two attorneys.

MOTION: J. DELEIRE

SECOND: No one responded.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

MOTION: FAILED

Chairman DeLeire asked if there were any additional questions or comments from the ZBA members before requesting Public Comments, and there were no questions nor comments. A.Dittami requested M. Sikorski to present his Administrative Decision, for the benefit of the ZBA and also for the public in attendance, prior to Public Comments.

M. Sikorski provided some background context that in 2014 when the Town re-zoned the area of town along Route 1 and created separate commercial zones, that no one on the Planning Board envisioned a residential subdivision in the TC Town Common commercial zone. There have been no residential subdivision applications within the TC since 2014 until now. All other residential subdivisions have been in the AR zone where there is a minimum two-acre zoning requirement for lot size. Now, currently, in the TC zoning district the lot size requirements are smaller than previously required. The Subdivision Regulations in the AR zone require a minimum lot width of 125-feet, and a minimum frontage requirement of 250-feet. The TC zoning district only requires 75-feet of frontage, so the applicant will be seeking relief from the Planning Board for those requirements as residential development within the TC zoning district. M. Sikorski stated that he envisions some greater clarity that will be needed in the ordinances to address residential development within the commercial zones. M. Sikorski said that the particular lots are heavily encumbered by wetlands and wetland setback areas, to site the houses, the well, the septic systems, and the septic reserve areas. S. Bryant stated that he felt that that characterized the uniqueness of the lots, and that he supported the Administrative Decision because it interpreted the definition (of a wellhead as a structure) across all types of zoning districts.

A.Dittami asked M. Sikorski if there was any definition in the ordinance on which he relied to make his determination that a well is a structure? M. Sikorski responded that he looked at the definition of the term “*structure*” in the zoning ordinance and the word “*well*” is not mentioned. He pointed out in his decision letter that it would be difficult to list every item that is a structure in the definition. A. Dittami read the definition of “*structure*” from the ordinance. S. Bryant added that there are a couple of exceptions listed in the definition, but that “*well*” is not listed as an exception. M. Sikorski said that he used the definition of the word “*structure*” in the Zoning Ordinance, and then coupled that with the section of the Subdivision Regulations which included in the laying out of a subdivision that a well had to be included.

H. Boyd responded to a statement made by the Building Inspector that there was so much wetlands on the property and said that the statement was not correct, and clarified that it is not wetlands, but the imposition of a 100-foot wetland setback that creates the development constraint for the lots. M. Sikorski responded that he stands corrected. H. Boyd continued that the lots are mostly Upland parcels, one is comprised of two-acres that has an acre of wetlands, the second lot has 70,000-sqft with 1.25-acres of upland, and the third lot is almost twice the required square footage of 32,000-sqft lots in the TC zone. H. Boyd stated that the applicant could install twenty birdhouses attached to the ground and not need ZBA review to do so, but a

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

wellhead needs approval. He concluded by saying the most important part of the application is protecting the resources of the property.

S. Bryant asked the Chairman a procedural question if it made sense to open the meeting for Public Comment on an Administrative Appeal decision, and A.Dittami responded that because it is a public meeting that the public should be allowed to comment.

PUBLIC COMMENT:

1) Ray Tanguay, 5 Glenwood Road. He is an abutter to the project. He submitted some written material to the ZBA at the meeting. He provided an environmental fact sheet from NH DES regarding wells and setbacks, from surface water swamps, a 50-foot setback is required specifically for site selection for private drinking wells. He questioned the applicant's comparison of a well to a transmission line or to a pipeline, as he likened his understanding of a well more like a septic system as a void underground. He stated that transmission lines are often to the benefit of the general public, whereas a private well is for the benefit of private individuals. R. Tanguay questioned the 100-foot setback of the wetland setback area and whether the ZBA has the authority to change it or whether that should be changed by a vote of the Town. Lastly, he raised concern about potential contamination of the well from flooding events, and what the applicant proposed to protect and to mitigate the wells from potential flooding.

A.Dittami asked about the method of construction of a well, as detailed on the NHDES sheet provided by R. Tanguay, that specifies that grouting of well casings are required when setbacks are not met, by filling the void space between the outside of the casing and the natural earth with an impervious material such as neat cement to attach it to the ground.

S. Bryant responded to a question R. Tanguay posed about whether the ZBA has the authority to change a zoning ordinance, and the response was no, that zoning ordinance changes get voted on by the town at Town Meeting. S. Bryant continued that the ZBA does have authority to grant Variances, and, in some cases, Special Exceptions, based on unique conditions. A Variance is based on five criteria that the ZBA is held to by the State, so the ZBA can grant Variances and Special Exceptions, but they cannot change the zoning.

R. Tanguay raised a last point about the applicant's appeal of the Administrative Decision that stated *that there are no mapped aquifers*, and made the point that that does not mean that there are not any aquifers present. He continued that many neighbors' wells in his neighborhood are shallow wells, and he wonders what will happen to those wells when this proposed community well gets installed on this site. Will it affect their shallow wells? If this is a concern, then maybe there should be an evaluation done by the applicant to confirm that there is no aquifer, and its effects on other wells in the neighborhood.

2) Will Lojek, 28 Kensington Road. He is not an abutter to the project. He said that he has some experience with wells, and that you never know what you are going to get, as you could go to 35-feet or you could go to 135-feet, you just don't know. He said that he heard nothing from the applicants about the volume of water required for the proposed *community well*. He repeated

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

that you don't know what you are going to get, and you may not need a wellhead on top of the casing if the water is under pressure, as an Artesian Well, but the casing may need to be protected with a well cap instead. W. Lojek described that there will be a lot of spoil from drilling the well, and it is not only water, it is pieces of rock and clay, and it all has to be cleaned up but he has no doubt that the applicant can handle it and contain it with barriers etc. He continued describing that because the well is proposed to be located in the wetland setback area, that it has to be grouted, and the only type of grout to use is pressure grouting to ensure there is no other type of effluent running into it.

3) Andrew Gray, 3 Glenwood Road, said that he is an abutter to the project. He stated that he is a multi-state licensed civil engineer with specialization in hydrology, wastewater treatment, and environmental compliance. He said that he worked for seven (7) years doing inspection, design and oversight of residential wells and septic systems, and that he is a bit of an expert on this subject. He strongly urged the ZBA to support the application for the wellhead within the setback as a structure, or add an exception to the definition, so that people could move on to discussing the project as a whole. He stated that there are three reasons for a wetland setback to exist: (1) is to keep from building houses too close to areas that are likely to get flooded; (2) is to keep the wetland setback from polluting the wetland, such as pesticides, or oil or typical household runoff; and, (3) to keep from changing the hydrology of a wetland, either by adding extra water or by draining it and cutting it off. He continued that the location of a wellhead in the wetland setback is meaningless and will not affect the functionality of the wetland at all, likening the wellhead to a granite boulder on the ground.

A.Dittami asked A. Gray if, in his experience, wells were considered structures, and he responded that it varies from town to town. A. Gray continued that the well would not be at risk from the wetlands, nor cause risk to the wetlands.

4) Scott Bieber, 5 Woodlawn Avenue. He is not an abutter. He spoke about the displacement of water, both groundwater and aquifer water, as he works in the commercial construction business, and he knows a little about drilling wells. He agreed with S. Bryant that drilling a well creates a lot of material. He said that his neighbors have 250-foot wells, but he had to drill to a depth of 510-feet. It is not just about finding water, but about finding the volume of water needed for a structure (residential or commercial). He said that at the subsequent meeting in late March that his neighbors will want to speak to how each of the proposed structures will affect the movement, use, contamination, and displacement of both the ground water and the aquifer water of the neighborhood over time.

5) Ivan Stanek, 10 Woodland. He is not an abutter, and is the last property before I-95, where he has owned for 10 years. He discussed some drainage issues in his neighborhood, specifically the flow of water into the wetlands, and said that it should be considered.

6) Dan Mullane, 17 Glenwood Road. He is not an abutter. He bought his property in 2003 and knew he had water in his backyard, but never estimated the level of the water issue. He had wanted to move his well to the right side of his house so that he could reconfigure his septic

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

system because his property is right on the wetland, but he was denied by the former Building Inspector because he was in the wetland setback area, so he is looking for consistency and accountability to apply the same standards with this application.

Chairman DeLeire asked the applicant if he wanted to respond to any of the comments made during the Public Comment period, before the ZBA started their deliberations.

J. Pasay said that the regulatory context is that the Zoning Ordinance says that there cannot be any structures nor impervious surfaces within the wetland or wetland setback, yet the ordinance allows many types of structures within those areas, such as: roads, transmission lines, pipelines, fences, boundary walls, boardwalks, and docks on pilings, either by right or by Special Use Permit from the Planning Board. So the Administrative Appeal question is whether a wellhead should be interpreted very narrowly to be included as a structure; or, should a wellhead attached to a transmission line or a pipeline (allowed by Special Use Permit) be akin to such things as birdhouses, fences, and boundary walls and considered an impervious surface that is allowed to be within the wetland setback area, and to be interpreted more broadly.

S. Bonillo reiterated that the proposal advances the spirit and intent of the ordinance, and the wetlands setback resource work will leave the site in a better condition by adhering to the following mitigation values: removing and preventing the spread of the Japanese Knotweed on site, recreating and enhancing wetlands, decommissioning and discontinuing a septic system, and providing additional wildlife habitats with more shrubs and bird boxes.

Chairman DeLeire closed the Public Hearing.

A.Dittami made a Motion regarding **Case # 23-02: Application from 5 Kensington, LLC for Appeal of Administrative Decision**, alleges that the Building Inspector has made an error in the decision, determination, or requirement on 10/17/2022, to 5 Kensington, LLC, in relation to Article III, Section 9.3.24, and Article III, Section 13.3.14 of the Zoning Ordinance.

MOTION: To uphold the Building Inspector's decision in its entirety, thereby denying the appeal.

The findings of fact that support this decision are:

1) The NH Handbook for ZBA (updated to 2022) discusses the intent of law that should be taken into account, *"where the ordinance defines the term in issue, the definition shall govern"* (Trottier v City of Lebanon).

2) The definition of *"structure"* is listed on page 12 of the Zoning Ordinance, and, in summary, states anything above or below ground, and it says attached directly to or indirectly to the ground.

3) The applicant's attorney recognized that a well is a structure.

4) The NHDES info sheet provided by a resident during Public Comment specified that the components of a well must be attached to the ground with grout.

5) Nowhere in the Zoning Ordinance is a *"well"* listed as a structure requiring a Special Exception.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

For those reasons, or Findings of Fact, the Building Inspector's decision was correct, and that decision should be upheld, and for the purposes of this case, a "well" should be considered a "structure".

MOTION: A. DITTAMI

SECOND: S. BRYANT

UNANIMOUS

There was an approximate fifteen-minute break taken by the ZBA and the Public between the two cases.

2)Case # 23-03: Application from **5 Kensington, LLC** for Variance, to the terms of the Zoning Ordinance Article III, Section 8.4.1.1, and Article III, Section 8.5.2, and asks that said terms be waived to permit well head within the Wetlands Conservation District setback, in Zone TC: Town Common District, at property located at **5 Kensington Rd (Map 8 / Lot 22)**.

J. Pasay, of DTC Lawyers for the applicant, memorialized and incorporated into this case all the dialogue, testimony, presentations, background, and public comments made in the previous ZBA Case # 23-02, to be part of this case. The second point J. Pasay made was that the ZBA declined the request to seek legal counsel on the issue of authority of the Planning Board. The third point was that since the ZBA upheld the Building Inspector's decision that determined that a wellhead/well is a structure, he continued that the analysis for the Variance is more straightforward than the prior case. J. Pasay stated that Variance relief in NH comes down to the following two basic questions: (A) does enforcing the ordinance in question on this property, with its unique circumstances, advance the purpose of the ordinance? (B) Is this a reasonable proposal?

J. Pasay provided context that the discussion would be in the terms of the Wetlands Conservation District ordinance, and the whole point is to protect the wetlands resources. The clear, expert analysis and the data points that have been provided by S. Bonillo and Mission Wetlands is that not only will the project, nor the wellhead, not impact the wetlands or the wetland setback, but the net result of the project will make the property much better and much further aligned with the purposes of the Wetlands Conservation District (WCD) than it is today because the values and functions of the wetlands on the property are being enhanced because of the proposed project.

J. Pasay addressed the five (5) criteria the ZBA are required to use to evaluate requests for Variances. He stated that the applicant is seeking relief from the following two sections of the ordinance: Article III, Section 8.4.1.1 to permit a single wellhead within the WCD setback, and, Article III, Section 8.5.2 which is the table in the ordinance that establishes the 100-foot setback around wetland resources.

J. Pasay stated that the Supreme Court directs the first two (of the five) Variance criteria to be analyzed together. He stated that the 12-inch wellhead *is not contrary to public interest*, and that *the spirit of the ordinance is not only observed*, but it is advanced. J. Pasay stated that the

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

proposed variances do not conflict with the WCD ordinance as they protect the wetlands and the wildlife. He referenced the wetland report completed for the project, which represents that there is no conflict of the proposed variances with the WCD, because the project advances those purposes. Only a very small and minor impact is contemplated as follows:

- by recreating 1,552-square-feet of wetland in the area where there is an existing septic tank actively leaching into the wetland;
- by removing that septic tank;
- by restoring 645-square-feet of temporary impact;
- by contributing a planting scheme into the recreated wetland area;
- by practicing Best Management Practices throughout construction;
- by the removal of approximately 800-square-feet of Japanese Knotweed, invasive plant species; and
- by the installation of new Blue Bird nesting boxes.

The result is a higher and better functioning wetland, which is the whole point of the WCD ordinance. The conclusion is that the installation of a single wellhead is a di minimis use within the WCD setback, given a review of the range of allowed uses within the same WCD setback. The applicant believes that the first two criteria of the Variance requirements are satisfied. He stated that the variance requests also satisfy the case law criteria, in that they do not alter the essential character, nor threaten the public health and safety.

The third variance criteria is whether *substantial justice is done*. J. Pasay stated that to satisfy this criteria there must be some gain to the general public by denying the Variance request that outweighs the loss to the applicant from its denial. He stated that the applicant sees that there is no gain to the public by denying the application because there is an indiscernible impact caused by the wellhead. S. Bonillo has testified that the wellhead is not causing an impact onto the wetlands or onto the wetland setback, and alternatively it is enhancing those functions and values, so both the applicant and the public gain from the enhanced values.

J. Pasay reviewed the zoning change made by Town Meeting (not the Planning Board) in 2014 where the minimum lot size requirement was reduced to 32,000-square-feet for the Town Common zoning district. He stated that the smallest lot size proposed for the applicant's proposed subdivision is 55,000-square-feet, that is significantly larger than the required minimum. He juxtaposed the lot sizes of the proposed three lots to be created, against the neighborhood immediately adjacent, most of those properties are half-acre lots, and the proposed lots are bigger lots. The applicant believes that the third criteria of the Variance requirements is satisfied as the result is positive for the public and is positive for the applicant.

The fourth variance criteria is that *the values of the surrounding properties are not diminished* by the proposed project. The applicant does not see any evidence in the record to suggest that it would; globally, the project proposed is reasonable development of a very large lot five-acre lot in the Town Common zoning district as single-family use. The applicant believes that the fourth criteria of the Variance requirements is satisfied.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

The fifth variance criteria is that *literal enforcement of the provisions of the ordinances would result in an unnecessary hardship, and the unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.*

J. Pasay stated that the hardship test can be broken into the following three parts: (1) determining if there are special conditions of the underlying property which distinguish it from other properties. He stated that there are special conditions, namely, that the parcel is very large at five-acres, and significantly larger than all of the properties surrounding it. Another special condition of the property is that the front portion of the lot is encumbered by a wetland, and the wetland has significant 100-foot setback zones around it which limits where this type of development can occur, even though the vast majority of the site is Uplands in nature. There is also a man-made fire pond, which is very unique.

The second part of the hardship test is what is the relationship between the ordinance in question (the setback), and its application to this property and the proposal. Are the points of the ordinance being advanced by applying it to this property? The applicant responds that it is not. J. Pasay stated that if the ZBA votes to Deny the Variance application, it will not be an action that advances nor further protects the wetlands on site. He stated that the opposite would be true, that it would prevent a project that would better serve the wetlands onsite. The purpose of the wetlands' setback provision is to protect the wetlands, which is the specific purpose of the relief the applicant needs. The general purpose is to protect the wetlands and to protect the wildlife. The wellhead will be sited on a location that is already going to be disturbed via the construction of the driveway. The granting of the Variance will better align the property with the express purpose of the WCD ordinance than exists today, through all of the restoration and mitigation efforts, the wetlands creation, the septic removal, the nesting boxes, and the removal of the invasive plant species.

The third part of the hardship test is whether the proposed use is reasonable. J. Pasay stated that the applicant believes that this test is satisfied. He continued that the legislative body has allowed fence posts, boardwalks, pipelines, transmission lines and other totally impervious surface areas in this district, and this is functionally indistinguishable from those types of uses. Due to the uniqueness of the property, the proposal for the *community well* (which is, itself, evidence of the applicant's effort to minimize to the greatest extent possible, the impact by reducing their proposal from three wells to one well) means that it is a reasonable proposal.

Chairman DeLeire asked what the square-footage of the proposed homes will be, and will they be marketed to the general public, or are they planned to be built for family members. The applicant responded that the homes will be roughly 1,800 to 2,500-square-feet of livable area, and marketed to the general public.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

M. Sikorski asked H. Boyd to show on the Site Plan the location of the proposed well, which he did. M. Sikorski followed-up asking H. Boyd if this is a “*Small Community Well*”? H. Boyd responded that he would have to look at the State definition of a *Small Community Well* to be able to respond accurately. H. Boyd said that it would be a “*Shared Well*”. H. Boyd continued that to his knowledge a “*community well*” has a 400-foot radius and serves a multitude of people. M. Sikorski said that he wanted to make sure that the applicant is asking for relief from something that is defined because the first thing he does as Building Inspector is to consult the State Guidelines. M. Sikorski continued that he was searching for *wells* and only came up with the definitions for a *Large Community Well*, or a *Small Community Well*. He did not find a definition for a *shared well*. H. Boyd said that it would not be a *Large Community Well*. M. Sikorski said that his research of a “*Small Community Well*” did not specify the total number of customers it serves, but rather by the gallonage, and he continued that the smallest radii for a *Small Community Well* is 150-feet. H. Boyd responded that he did not think that was correct based on the direction he obtained from the State to size the well. M. Sikorski offered to share with H. Boyd what he found to be sure they are talking about the same thing. J. Pasay said that he was not sure that it would be determined at this meeting, but if as a result of further due diligence with the State that different specifications are required, then they will be back to the ZBA.

Chairman DeLeire said that what he determined was that it is a *Small Community Well* because it is less than 24,000 gallons. H. Boyd said that regardless, if it is one *Community Well* with a larger radius requirement, or three individual wells with a standard 75-foot radii, the applicant needs relief to be located within the wetland setback. S. Bryant said that the ZBA needs to know if they are being asked to grant one or three wells, and the response from J. Pasay was that the applicant is asking for one well. M. Sikorski said that Chairman DeLeire stated that the ZBA can not grant relief to the State requirements either. J. Pasay paraphrased that M. Sikorski is asking what is depicted on the plan, and if that ends up not being viable from the State’s perspective, or it needs to come back to the ZBA then it will. S. Bryant said that the Variance could be contingent on State approvals.

H. Boyd discussed the fear of draw-down of the aquifer by one of the abutters who commented during the prior ZBA application Case #23-02, and said that that is probably not going to happen. He stated that there already is one existing house, with an existing well, so there will be an additional two households that will meet the State requirement of 150 gallons/bedroom/day, and at 3-bedrooms each that will be a total of 900 gallons/day.

A.Dittami raised the possibility of potential of future bedrooms expansion if an Accessory Dwelling Unit (ADU) is created at any of the new households, and asked if the planned well is taking into account that possibility of future expansion. H. Boyd responded that the well radius is what it is, and that he was not sure that they could accommodate a much larger radius for more people, and he believed that the proposed well serves up to twenty people. M. Sikorski stated that the ADU ordinance specifies that there must be the appropriate amount of septic and water supply for the additional bedrooms. A. Dittami asked H. Boyd what the affect of the additional bedrooms would have on the aquifer, and the response was miniscule at 900 gallons/day.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

A. Dittami followed up asking about the flood zone and flooding, and H. Boyd responded that this property is not in the flood zone. He continued saying that there will be on-site infiltration for stormwater for water coming off of roofs, etc, so there will be no water coming off-site that will ill effect neighbors.

H. Boyd reported that the State (Eben Lewis) was pleased with the proposal because the compaction would be eliminated over the intermittent stream crossing, there is going to be removal of a septic system that currently leaches into the wetland, the box culvert for the driveway crossing is going to facilitate migration of wildlife, and the patch of invasive plant species of Japanese Knotweed will be eradicated. H. Boyd additionally reported that the applicant has presented their plans to the Conservation Commission, as it is a requirement of the wetland permit process. They were also reviewed by the NH Subsurface Bureau for the subdivision approval for the septic, and by the NH DES for the wetland impacts. H. Boyd summarized that the project is a net positive for the Town; and J. Pasay stated that the ordinance is advanced by saying yes to the Variance requests.

PUBLIC COMMENT:

1) Ray Tanguay, 5 Glenwood Road, stated that the applicant has not presented any alternatives for development that would not need variances. He cited a legal case from 2002 that was *Hampton Falls V Green* regarding a development of multiple homes that could not comply with the zoning requirements. He continued that the case went to Supreme Court and resulted in the Judge finding for the Town. The Developer attacked the constitutionality and the efficacy of the ordinance; however, the Judge said that it was the Plaintiff's (the Developer's) compliance with the ordinance that was at issue with the case, not the validity of the ordinance.

2) Skip Medford, 8 Woodlawn Avenue, commented about the leaching and perhaps failing septic system onsite, and said that the Conservation Commission, the Building Inspector, and the Board of Health should be alerted because it may be affecting downstream Whittier Pond, and the Marsh, and the clams everyone enjoys. He made the distinction between utilities sited for public benefit and private wells sited for private benefit. He disagreed with the applicant's statement that there will be no wetlands impact because there will be temporary wetland impacts and permanent wetland impacts. S. Medford stated that if there is *no impact*, then why wasn't a "*No Impact Alternative*" presented? Additionally, there were no alternatives presented such as Option 1 or Option 2 of varying levels of impact. S. Medford cited a legal case of *Cherry V Hampton Falls (Planning Board)* that went to the Supreme Court in 2004, where the evaluation of alternatives and natural resources impacts and especially wetlands were essential to the Planning Board's evaluation. The case concluded that compliance with the existing law is important. S. Medford was concerned about the precedent that the granting of this variance would cause, to allow more "structures" within wetland setback areas throughout town.

Chairman DeLeire closed the Public Comment section of the hearing, and asked the applicant if he wanted to respond to any of the comments raised by the public. J. Pasay clarified that the regulations being discussed, relevant to the Variance requests, are exclusively applied to private residential and commercial development, not public improvements. The Town and the Federal

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

government are immune from zoning regulations, and they can do projects without needing relief at all, such as the LAS School parking lot and stormwater management project, right behind the proposed project. In terms of the alternative analyses point raised, the State requirement for the wetlands analysis does require an alternatives analysis, which was provided. The crossing is at the narrowest point of the wetlands. The well is going to be located in an area that is going to be disturbed anyway. The notion that this project does not exemplify what is at the root of every wetlands analysis, which is avoidance and minimization, is not correct factually, nor legally. This project exemplifies avoidance and minimization, which is why it was received so well by the Conservation Commission, and why the State was so pleased with it.

A.Dittami asked J. Pasay if the lot could be subdivided into just two lots and not need a Variance, and J. Pasay said that he did not know. J. Pasay said that that is not the proposal before the ZBA, that the applicant's proposal is for three lots. Whether there is an alternative is the old hardship test before 2011, and currently the hardship test is whether the proposed use advances the purpose of the ordinance. If it is not advancing the purpose of the ordinance, then it is a taking. J. Pasay stated that whether or not there is another viable alternative is irrelevant under State law.

A.Dittami stated that he would like more time to consider the application, as he sees both sides of the Attorney and also of the residents. He said that he would like to make a motion to postpone a written decision to the next meeting.

Chairman DeLeire polled the ZBA members on the subject of either moving forward or postponing the vote. W. Vance wanted to move forward and said that she did not know why there was a need to postpone the vote any longer. S. Bryant was torn because he agrees with A.Dittami, although there were very good points made by all. S. Bryant continued that the application comes down to whether the five criteria for the Variances were met, to put the well in the wetland setback, given the unique nature of this lot. The Town Common zoning district was created by the Town with certain dimensions and setback requirements, so that the residents there can take advantage of the regulations so they can put three homes on the lot, and they meet all other conditions absent the well. The remediation the applicant is putting in place is laudable. S. Bryant summarized that he thought he might have enough information to make a decision. J. Hasenfus said that he had enough information to make a decision with the criteria.

Chairman DeLeire said that the ZBA had heard from the applicant and also had heard from the Public. He acknowledged that much of what S. Bryant said was true. He said there may be some folks in town who don't like the idea of this lot getting subdivided into three lots, but the Town took the position to change the zoning, that has enabled the applicant to make this proposal. Chairman DeLeire said that he thought the applicant has been very creative in creating the three lots as it looked like a challenge to do so. He continued, that just like the Town called a well a structure, the Town created the zoning to allow the subdivision to occur, so he summarized that he had enough information to move forward.

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

MOTION: To approve Case # 23-03: Application from 5 Kensington, LLC for Variance, to the terms of the Zoning Ordinance Article III, Section 8.4.1.1, and Article III, Section 8.5.2, and asks that said terms be waived to permit well head within the Wetlands Conservation District setback in Zone TC: Town Common District, at property located at 5 Kensington Rd (Map 8 / Lot 22). The motion is to approve said relief, with the following conditions:

- 1) Incorporate by reference not only all of the representations made by counsel for Case 23-03, but all of the representations made by counsel for Case 23-02;
- 2) Include by reference the NH Code of Administrative Rules ENV-DW-305-09, if applicable, to ensure compliance with the fifty-foot setback from the intermittent stream;

MOTION: J. DELEIRE

AMENDMENT TO THE MOTION: to amend the language of condition #2 as follows: Include by reference “*to include but not be limited to*” the NH Code of Administrative Rules ENV-DW-305-09, if applicable, is complied with, that is the fifty-foot setback from the intermittent stream.

- 3) Removal of the existing septic system and restoration of the wetlands back to its pre-existing conditions;
- 4) Elimination and eradication of the Japanese Knotweed invasive plant species.

MOTION: S.BRYANT

SECOND: W. VANCE

Discussion: A.Dittami said that he was concerned with the effect of the proposed well on the existing aquifer. S. Bryant asked if the ZBA was unduly burdening the applicant because the applicant has the right to do this. A. Dittami reiterated that the ordinance does not allow the applicant to do what they want to do by right, so they are seeking a Variance; and, the ordinance is in place to protect the water supplies. A. Dittami recommended the applicant provide a study by a qualified hydrologist to show that the proposed well will not be detrimental to the aquifer. Chairman DeLeire asked J. Pasay for a response to the request for a hydrology study.

J. Pasay stated that the ZBA needs to consider the record that is before the board. There is a Wetlands Scientist who gave expert testimony regarding transmissivity, and how this is not an area of high transmissivity, how it is an area that is conducive to wells, and that is the only expert testimony before the ZBA. He said that there are general concerns and considerations by people who are not wetlands scientists, nor hydrologists, and a Board member who is neither either, so it seems too much. There is expert evidence before the ZBA. This applicant has put forth an immense amount of expert analysis and data. J. Pasay stated that he did not think that there was any question that the net result is a better property vis a vis the Wetlands ordinance.

Chairman DeLeire said that J. Pasay’s points are duly noted.

AMENDMENT TO THE MOTION:

- 5) To provide a study to the Building Inspector, by a qualified hydrologist, to show that the proposed development will not adversely impact the aquifer.

MOTION: A. DITTAMI

SECOND: J. HASENFUS

YES=3, MOTION PASSES

ZONING BOARD OF ADJUSTMENT	February 23, 2023 7:00 PM
TOWN OF HAMPTON FALLS	TOWN HALL

FINAL

J.Pasay recommended to convert condition #2 regarding the specificity of the Code of Administrative Rules reference to the more general statement as follows:

2) Must comply with all applicable State Statutes and Administrative Rules, and all the ZBA members unanimously agreed.

MOTION: To approve the Variance as detailed in the cumulative motions.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

For the purposes of the record, the Vote on ZBA Case 23-03 is summarized as follows:

MOTION: To approve Case # 23-03: Application from 5 Kensington, LLC for Variance, to the terms of the Zoning Ordinance Article III, Section 8.4.1.1, and Article III, Section 8.5.2, and asks that said terms be waived to permit well head within the Wetlands Conservation District setback, in Zone TC: Town Common District, at property located at 5 Kensington Rd (Map 8 / Lot 22). The motion is to approve said relief, with the following conditions:

- 1) Incorporate by reference not only all of the representations made by counsel for Case 23-03, but all of the representations made by counsel for Case 23-02;
- 2) Must comply with all applicable State Statutes and Administrative Rules;
- 3) Removal of the existing septic system and restoration of the wetlands back to its pre-existing conditions;
- 4) Elimination and eradication of the Japanese Knotweed invasive plant species;
- 5) Provide a study, by a qualified hydrologist, to show that the proposed development will not adversely impact the aquifer.

D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES: 01/26/2023

MOTION: To approve the meeting minutes from 01/26/2023.

MOTION: W. VANCE

SECOND: J. DELEIRE

UNANIMOUS

E. OTHER BUSINESS: There was no other business.

F. COMMUNICATIONS TO BOARD MEMBERS: There was no communications to Board members.

G. ADJOURN

MOTION: To adjourn the Zoning Board of Adjustment at 10:30 PM.

MOTION: J. DELEIRE

SECOND: S. BRYANT

UNANIMOUS

The next meeting of the Hampton Falls Zoning Board of Adjustment is scheduled for Thursday, March 23, 2023, at 7:00 PM at Hampton Falls Town Hall.

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