

HAMPTON PLANNING BOARD – MINUTES

May 7, 2003

PRESENT: Thomas Gillick, Chairman
Robert Viviano, Vice Chairman
Tracy Emerick, Clerk
Jack Lessard
Tom Higgins
Keith Lessard
Skip Sullivan, Selectman Member
Jennifer Kimball, Town Planner

Mr. Gillick called the meeting to order at 7:00 p.m. by introducing the Board members.
Mr. Gillick then asked Mr. Viviano to lead the Pledge of Allegiance.

I. NEW PUBLIC HEARINGS:

7. Jean McGough
Special Permit Application to construct a 6' x 24' addition to the existing home within the Wetlands Conservation District at 52 Hobson Avenue
Map 289, Lot 007
Owner of Record: Same as Above

Mr. Gillick announced to the Board of the request from Ms. McGough to postpone the above referenced hearing until June 4, 2003. Mr. Sullivan **MOTIONED** to accept postponement of this Special Permit Application until the June 4, 2003 Planning Board Meeting. Mr. Viviano **SECONDED. VOTE: 5 = YES. 1 = ABSTAIN** (Mr. Higgins). **MOTION PASSES IN THE AFFIRMATIVE.**

1. Girard Blais
Special Permit Application to construct a garage addition within the Wetlands Conservation District at 518 High Street
Map 151, Lot 13
Owners of Record: Girard & Darlene Blais AND Barbara Uga

Mr. Blais introduced himself and proceeded to state his intent to add an addition to the garage. He added that he attended the Conservation Commission meeting and their concerns were to place the garage on the side of the house, when, in fact, this would block the entryway to his house.

Mrs. Kimball refers to the memo dated April 23, 2003, from the Conservation Commission where it states "Mr. Blais withdrew his application" – this statement is incorrect. In fact, at the time consideration of this application was suspended with the Conservation Commission. Mrs. Kimball continued that the Board does not have a memorandum for or against, at this time. Mr. Gillick requests that the Board would like to have such a statement in writing at some time in the near future.

Mr. Gillick opens comments from the Board. Mr. Emerick pointed out that it appears the existing house and garage were already there and then the set backs were imposed. Additionally, there is no extension further into the buffer than the existing structure – Mr. Emerick does not see any problem

with it. Mr. Viviano asked for clarification on exactly what part is the addition on the plans. Mrs. Kimball verified what is the proposed addition and clarified the Conservation Commission recommended to shift the proposed piece of the garage forward to the road causing less impact to the buffer. Mr. Gillick asks if Mr. Blais could do this. He answered yes, however it would block the existing entry way to the house and the existing picture window. Mr. Higgins understood the existing shed to be removed would lessen the impact on the addition (and noted the driveway is not paved). Mr. Blais stated the shed can be removed. Mr. K. Lessard would like to hear from Conservation Commission in affirmative or negative before he makes a decision on this project. Mr. Blais confirmed the new garage would impact an additional 200 feet of the wetlands and he is due to go back to the Conservation Commission this month. Mr. J. Lessard agrees to have a definite answer back from Conservation Commission as well. Mr. Blais expressed his intent to retire to this home sometime in the future and hopes to continue forward with this project. Mr. Sullivan verified the house was built in 1972 – prior to the wetlands/buffer zone regulations – and suggests to take that into consideration. Mr. Gillick suggests that Mr. Blais obtain a statement in writing from the Conservation Commission for the Board to use as a focal point in order to move forward with this application.

OPEN PUBLIC HEARING: NO COMMENT – CONTINUE PUBLIC HEARING.

Mr. Sullivan **MOTIONED** to continue the Special Permit Application to construct a garage addition within the Wetlands Conservation District at 518 High Street Map 151, Lot 13 to the June 4, 2003 Planning Board Meeting in order for Mr. Blais to attend the May 27 Conservation Committee meeting for a definitive answer from the in writing. Mr. J. Lessard **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

2. John D. Lovetere
Lot Line Adjustment at
382 Exeter Road
Map 51, Lots 7 & 8
Waivers Requested: Subdivision Regulations Sections V.E.1, 5, 7, 8 & 9
(Detailed plan information: topography, utility locations, storm drainage plan,
location of fire hydrants & lights, landscaping plans)
Owner of Record: Same as Above

Mr. Peter Saari, Attorney, introduced himself as representing the applicant and Mr. John Lovetere was present as well. Mr. Saari proposes this project is merely ‘flipping’ lots as a paper change. Mr. Gillick was concerned if this request was within guidelines. Mrs. Kimball verified this is not a voluntary lot merger - what they are creating would be much more developable than what is there now – this is an acceptable application.

Mr. Gillick opens comments from the Board. Mr. K. Lessard does not see this as just flipping lots – he understands it as creating a new 12-acre lot and a new lot not quite 2 acres. He is concerned with the current frontage and the requirements deemed necessary to avoid a non-conforming lot. Mrs. Kimball offers information – she has had lengthy conversations with the Town Attorney, Mark Gearreald and Mr. Saari clarifying this existing plan, as shown, would require variances.

The situation plays out there is a zone line that goes through one of the pieces of property. The current ordinance says when you have a lot that has two zones, you can use one of the zones for an allowed use – you can’t have two uses – as long as the use is allowed in the zone and also meets the dimensional requirements. Mrs. Kimball continues to further clarify: this is partly industrial land and if the land was used for industrial purposes in the industrial zone, it would be a

conforming lot. However, if the land was used for residential purposes in the residential zone, it is not a conforming lot. Mr. Viviano asks to verify the only buildable area. Mrs. Kimball responded the easiest place to build would be south of the existing house. Mr. Viviano asked to verify what is the industrial line – even to use it as a driveway you would need a variance. Mr. Peter Saari explained they are not proposing any use so there is no request for variance at this time.

Mr. Gillick asks to clarify the current requirements. Mrs. Kimball answers neither lot has the required frontage or required lot width if they are used for residential purposes. In fact, the new Lot 7 is actually becoming more non-conforming because the lot width is shrinking. The plan as it stands and as proposed cannot be approved by the Board because it does not conform to zoning, regardless of how it is going to be used. There are things that can be done that can alter the plan where a variance may not be required in order for the Board to take action. However, that may create a situation, that in the future, if they choose to use the land in a certain way that may require a variance – and if they choose to use the land in another way, it wouldn't require a variance.

OPEN PUBLIC HEARING: NO COMMENT – CLOSE PUBLIC HEARING.

Mr. J. Lessard **MOTIONED** voted to continue the referenced Lot Line Adjustment and Waiver Request to the May 21, 2003 Planning Board meeting subject to submission of a revised plan that conforms to the current zoning regulations and/or does not require any variances. Mr. Higgins **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

3. M. Grail O'Connor, Paul Houghton, Judith McCarthy
Condominium Conversion at
6 N Street
Map 293, Lot 120
Waiver Requested: Subdivision Regulation Section V.E (Detailed Plan)
Owners of Record: Same as Above

Mr. Gillick offers *that* Mr. Higgins will step down for this hearing - Mr. Bilodeau, new alternate, will sit his place.

Mr. Stephen Ells, Attorney, introduced himself as representing the applicant. Also introduces, Mr. Ernie Cote, Surveyor for the property, and in the audience are the three owners, M. Grail O'Connor, Paul Houghton, Judith McCarthy. Mr. Ells continues to explain the application to allow the conversion of what is now an existing nine-unit apartment complex to eight units of condominiums. Currently there are two buildings – four and four – and the rear building has a basement apartment that has a certificate of occupancy - this will no longer exist once approved and converted to condos. The existing structure and use has been in place since at least 1973, all units have their certifications and there is no construction or changes planned or proposed. The Zoning Board has been informed of this 'special exception' procedure as a precaution. We believe we have a preexisting, non-conforming use that is a vested and protected use and right, and we believe the requested change in the form of ownership does not constitute any expansion of that non-conforming use.

In closing, Mr. Ells requests the Board to consider this: will the conversion to the condominium form of ownership have any effect on the use of the land? He is confident that changing from the current apartments to condos will have no actual effect on the use of the land.

Mr. Gillick brought up the fact of the reference to parking spaces on the plans. Mr. Ells understands the four or five spaces are not full size (9X18 required). Mr. Gillick also expressed his concern for a copy of the condo documents. Mr. Ells agreed to submit the proper papers.

Mr. Gillick offers comments from the Board. Mr. K. Lessard and Mr. Sullivan agreed that the parking spaces be removed from the plan in an effort to avoid any future situations that could arise.

OPEN PUBLIC HEARING: NO COMMENT – CLOSE PUBLIC HEARING.

Mr. K. Lessard **MOTIONED** to approve the referenced Waiver Request. The Board also voted to accept jurisdiction of and approve the Condominium Conversion of plan number 4-60-6064, dated 2/20/2003 subject to:

- 1) site plan revision removing all references to delineated & enumerated parking spaces;
- 2) a copy of condominium documents for the project file; and
- 3) certification of monumentation, final plans, mylar, and payment of recording fees prior to final approval.

Mr. Viviano **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

4. Andrew Kyriazis
Special Permit Application to remove two existing structures and replace with one duplex within the Wetlands Conservation District at
90 Island Path
Map 281, Lot 25
Owner of Record: Same as Above

Mr. Peter Saari, Attorney, introduces himself as representing the applicant. Also present were Mr. Andy Kyriazis the property owner, Mr. Joseph Coronati, Engineer and Mr. Jeff Canterra, Wetland Scientist. Mr. Saari proceeds to explain the application to remove two existing structures there are fairly severe encroachments now in the setback areas where the new construction will conform entirely to the setbacks. The other advantage of this proposal is the existing building is 14 feet from the marsh on the East and 8 2/3 feet on the West – the new construction will be about 20 feet from the East and West, and 39 feet from the North. The biggest change is that there will be mitigation done to this site. Mr. Gillick clarifies the reason for this application is for a Special Permit to work in the Wetlands Conservation District.

Mr. Gillick reads the memo dated April 23, 2003 from the Conservation Commission and references the note from their minutes of their meeting of April 22, 2003.

OPEN PUBLIC HEARING: NO COMMENT – CLOSE PUBLIC HEARING.

Mr. Gillick opens for comments from the Board. Mr. Higgins asks for verification to show where the existing septic tank is that is planned to be removed – septic area was pointed to on plans. Mrs. Kimball added that the proposal included use of the abandoned way, which requires Town Meeting vote under current law. If the owners do not have clear title through the proper channels to the land as shown, the duplex could not be built. In addition, Mrs. Kimball noted the rear abutters visited her and raised concerns as they are still using this road.

Mr. Sullivan **MOTIONED** to approve the referenced Special Permit Application, plan 03029, dated 4/14/03 subject to:

- 1) Conservation Commission be notified of demolition of buildings;
- 2) Conservation Commission be notified at completion of project;
- 3) use of appropriate silt fencing;
- 4) submittal of revised plans showing location of existing septic system to be removed;
- 5) the new structure shall be connected to Town sewer; and
- 6) review of plan C2 by Town Counsel to determine clear title of deed to owner regarding the 'abandoned right of way' (part of Old Garland Street) .

Mr. Higgins **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

5. Richard A. & Ruth E. Bley
8-Lot Subdivision at
Timber Swamp Road
Map 137, Lot 1
Waivers Requested: Subdivision Regulations Sections VII.F (Monumentation), VII.A 2&3 (Pavement Width & Curbing), and VII.C.2 (Stormwater Runoff)
Owners of Record: Same as Above
6. Richard A. & Ruth E. Bley
Special Permit Application for construction of culverts, wells and water lines within the Wetlands Conservation District associated with 8-Lot Subdivision at Timber Swamp Road
Map 137, Lot 1
Owners of Record: Same as Above

Mr. Peter Saari, Attorney, introduced himself as representing the applicant. Also present were, Mr. Richard Bley the property owner, Anne Bialobrzkeski of Stockton Services, Eric Weinrib and Tobin Farwell of Altus Engineering. Mr. Peter Saari proceeds to explain both applications that all the zoning requirements do not need any variances with this proposal. There is an agreement with abutters, The Hurd Family in the area West to allow drainage there – there are drainage easements shown on the plan. Because the project is serviced by wells in this area, there are protective areas shown on the plans – three of them require easements - the rest are under the required 10 feet. Mr. Saari continues the primary reason for this presentation is discuss the drainage and engineering related to this project. Mr. Weinrib adds his expertise to the proposed specifics of the drainage swale – expressing that the design is to reduce the impact that would occur to the East, reducing the both the peak rate of flow and the volume of flow to the East.

Mr. Weinrib has been out to the site a different times during rain to observe the flow, the water just sheets across the road – the intent is not to fix it (the existing runoff across Timber Swamp Road) just to reduce the impact. The rest of the flow, from the site, sheets to the West to the Wetlands and they intend to increase the runoff through the easement at the Hurd's property.

Mr. Gillick asks if the 8 Lot Subdivision conforms, in all respects, to the zoning ordinance? Mr. Weinrib answers yes. Mrs. Kimball also clarifies the Special Permit is to work within the Wetlands area which will be a permanent impact into the Wetlands Buffer.

Mr. Gillick accepts comments from the Board. Mr. Emerick is concerned for the access to the units having to drive over the leach field. Mr. Weinrib explains the plans represent a 5000 square foot receiving area that is suitable septic system area. The average leach field for a 5-bedroom house would be much smaller and the driveway can go across or around depending on the placement site. Mr. Higgins asks are utilities, lights coming later. Mr. Weinrib answers final location of the utility poles and transformers would be determined by the utility company. Mrs. Kimball offers in the past what the Board has done is requested designated areas and noted on final approvals. Mr. Higgins also asked who is responsible for granite curbing. Mrs. Kimball explains that the revised regulations, as a general rule, prefer one type of road and then on a case by case basis introduced waivers to eliminate granite curbs. Mr. Higgins additionally wanted to clarify the easement on the front two lots. Mr. Weinrib proceeds to explain the easement across the front two lots is proposed for the drainage pipes for the site - there is actually language that is provided from the Hurds that allows and increase in the run off. Mrs. Kimball clarifies the drainage swale along the roadway would be in the Town right of way.

Mr. Sullivan concerned with the Southeast boundary and the history of problems with the septic system. Mr. Bley is the owner of this property in question and has confirmed any of these previous problems have been fixed. Mr. J. Lessard questions the drinking water in the adjacent Mobile Home Park – Mr. Bley is not aware there are any problems with this. Mr. K. Lessard shows interest in a traffic study/line of site at Timber Swamp Road being right on a curve and on a hill. Mr. Weinrib did not have a professional study done – he has stood out there and monitored the traffic patterns. Additionally, Mr. K. Lessard also expresses concern for treatment in the drainage issues and elimination of the granite curbs. Mr. Weinrib explains there will be treatment in the roadside swale as well as in the buffer before it hits the swale. Mrs. Kimball clarifies the request is not to eliminate the drainage requirements, just modify some of the requirements. They are proposing to treat and delay the water somewhat. There may be a small increase in flow as it leaves the property line and that is what the Waiver Request is for – to allow a small increase across the property line (the abutting property has agreed allowing this) where it would flow into the existing Wetlands System.

Mr. K. Lessard asks for explanation of the monumentation. Ms. *Bialobrzewski* is requesting to decrease the size and number of the monumentation stone bounds to be used. Mrs. Kimball refers to her memo to Mr. Gillick dated May 6, 2003 bringing some comments regarding this project for the Boards information. Mr. Gillick is concerned with the wells and if DES will need to get involved. Mrs. Kimball answers because these are private wells they do not get involved with permits – they just require there are enough space for the wells. Mr. Gillick also concerned with the water testing and Mrs. Kimball assures the developer tests water first and then it is up to the individual owners are responsible for water quality.

OPEN PUBLIC HEARING:

Mr. Richard Brady of 115 Timber Swamp Road introduces himself. He is an abutter on the corner lot of this project. He is concerned with the drainage flow. The corner of his lot tends to be very wet as is. He is told the water will flow to the West and it appears his property, being below street level, will shed some water his way. Mr. Gillick offers his concerns that the regulation states this cannot happen and the Board will do their best to support that.

SUSPEND PUBLIC HEARING.

Ms. *Bialobrzewski* requests to discuss her concerns where and how monumentation should be placed. Is the monumentation request outside of the boundary? Mrs. Kimball explains the waiver

technically covers that request. Additionally, Mrs. Kimball clarifies the waiver is asking: 1) to put the monuments put deeper (set them flush); 2) use 3 x 3 bounds; 3) set ¾ iron pipes.

Mr. Sullivan **MOTIONED** to accept the waiver request from Subdivision Regulation Section VII.F (monumentation). **NO SECOND – MOTION FAILED.**

Mr. Viviano **MOTIONED** to deny the waiver request from Subdivision Regulation Section VII.F (monumentation). Mr. Higgins **SECONDED. VOTE: 5 = YES. 1 = ABSTAIN** (Mr. Sullivan). **MOTION PASSES IN THE AFFIRMATIVE.**

Mr. K. Lessard **MOTIONED** to accept jurisdiction of and continue the referenced 8 Lot Subdivision, remaining Waiver Requests and Special Permit Application to the June 18, 2003 Planning Board meeting subject to:

- 1) provide line-of-sight measurements at the proposed intersection;
- 2) Provide additional topography on Mr. Richard Brady's lot at 115 Timber Swamp Road; and
- 3) review by Town Departments and Rockingham County Conservation District (for location of the wells within the Conservation District).

Mr. Viviano **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

II. ATTENDING TO BE HEARD

1. 1st and Ten Property Corporation
c/o Malcolm E. Smith, III
Parking Lot application at
373 & 375 Ocean Boulevard
Map 275, Lots 8 & 25
Owner of Record: Same as Above

Mr. Smith introduced himself as property owner. Mr. Jeff Clifford, Vice President of Altus Engineer was also present. Mr. Smith proceeded to explain the application as having been before the Board previously. There have been no changes to the original application and this project was never started once granted last year. Mrs. Kimball reads the decision letter dated June 21, 2002 and clarifies the application was amended at that time (from a coffee shop and paved lot to the proposed seasonal, gravel lot. Mrs. Kimball noted that at that time, the Board did not place a limitation on the use.

Mr. Sullivan **MOTIONED** voted to approve the referenced Parking Lot Application to operate a seasonal parking lot subject to:

- 1) conditions as set forth per last year's memo dated June 21, 2002 that is still in effect until September 30, 2003.
- 2) the fence, gates, lights, and bumper blocks shall be in place prior to opening; and
- 3) payment of the recording fees of \$36.00 to the Town of Hampton.

In addition, the Board expressed a strong desire that it not see any further temporary use requests.

Mr. Emerick **SECONDED. VOTE: All. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

III. CONSIDERATION OF MINUTES – April 16, 2003:

Mr. Higgins asks to revise page 4 to include: *applicant to discuss with abutter's to the West the concerns and explanations of the setbacks, walls, etc...*

Mr. K. Lessard **MOTIONED** to approve the minutes as amended. Mr. Viviano **SECONDED**.
VOTE: Ail. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.

IV. CORRESPONDENCE:

Mrs. Kimball read the memo dated May 6, 2003 from Janet Reynolds regarding her request to extend the approved application for the Royale Shores Vacation Resort, to June 19, 2004.

Mr. Emerick **MOTIONED** to grant a one-year extension for the referenced, conditionally approved application to June 19, 2004. Mr. Sullivan **SECONDED**. **VOTE: Ail. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

Mrs. Kimball noted a memo dated May 1, 2003 from US EPA (New England) regarding Public Beach Inspection Program. The memo is located in the reading file at the Town Planning Office.

V. OTHER BUSINESS:

Mr. Sullivan brings to attention the Town was served with two lawsuits filed (Vertical Building and Harbor Condos). Mrs. Kimball noted these are under Zoning Board decisions and she informs there will be a consultation with the Town Attorney, Mark Gearreald on May 21, 2003 at 6:30pm. This consultation is a question and answer session to understand the issues and how it impacts the Planning Board. This session is a non-meeting with the Town Attorney, and therefore, is not a public meeting.

Mr. Sullivan adds there is a proposal to permanently close access to Tuck Road. Mrs. Kimball clarifies some abutters are interested in denying access to the Nursing Home - it would not closing the entire road. It does fall under the jurisdiction of The Planning Board and when abutters come forward more detail will be discussed at that time.

Mr. Gillick sent out a memo this week on the Capital Improvements Project process starting and asks a Board member to participate. Mr. Emerick has agreed to attend. Also, one of the Board's alternates will be designated as "member at large". The initial meeting will be Tuesday, May 20, 2003 at 6:00 p.m.

Mrs. Kimball asks for anyone interested in serving on the Future Land Use Subcommittee by Friday, May 9, 2003. She also noted that the Board alternates will start a rotating schedule to attend the meetings, and Mr. Bilodeau will be attending the first meeting.

Mr. J. Lessard **MOTIONED** to adjourn. Mr. Emerick **SECONDED**. **VOTE: Ail. MOTION PASSES UNANIMOUSLY IN THE AFFIRMATIVE.**

Meeting adjourned at 9:35 p.m.

Respectfully Submitted,
Janine L. Fortini
Planning Board Secretary

Minutes as amended May 21, 2003