

HAMPTON PLANNING BOARD – MINUTES
May 3, 2006 – 7:00 PM

PRESENT: Tracy Emerick, Chairman
Tom Gillick
Tom Higgins
Fran McMahon, Clerk
Jim Workman, Selectman
Keith Lessard
Donna Mercer, Alternate
James Steffen, Town Planner

ABSENT: Bob Viviano

Chairman Emerick began the meeting at 7:00 PM by introducing the Board members. Mr. Emerick led the Pledge of Allegiance to the flag.

I. WITHDRAWALS AND POSTPONEMENTS

Chairman Emerick announced that these applicants requested continuation of their applications:

6-24) John Simmons
Site Plan Review at 886 Lafayette Road, Map 71 Lot 3
Waivers from Site Plan Regulations Section V.E. Detailed Plan – Storm
water drainage control plan & Section VII.B.1 Parking Lot Design
Owner of Record: Simmons Trust

MOVED by Mr. Gillick to continue this application to the May 17, 2006 meeting of the Planning Board.

SECOND by Mr. McMahon

VOTE: 6-0-0

MOTION PASSED

6-40) Thomas G Burness
2-lot Subdivision at 31 Park Avenue, Map 190 Lot 12
Waivers from Subdivision Regulations V.E.5, V.E.7, V.E.9 + V.E.14
Owner of Record: Thomas G Burness

6-41) Thomas G Burness
Special Permit to Impact Wetlands Conservation District at
31 Park Avenue, Map 190 Lot 12
Owner of Record: Thomas G Burness

MOVED by Mr. Gillick to continue this application to the June 7, 2006 meeting of the Planning Board.

SECOND by Mr. McMahon

VOTE: 6-0-0

MOTION PASSED

II. NEW PUBLIC HEARINGS

- 6-42) Steven Kenney
Condominium Conversion at
3 and 5 M Street
Map 293 Lot 102
Waiver from Subdivision Regulations Section V.E (Detailed Plan)
Owner of Record: Steven Kenney

Stephen Ells, Attorney, Steven Kenney, Owner, and Ernie Cote, Surveyor, presented this application. The property has three structures. Mr. Ells stated that this is a 4-unit rental property with a year-round Certificate of Occupancy. It is a pre-existing nonconforming property. The use after conversion will be the same as it is now. They have requested a waiver from the Detailed Plan requirement of Subdivision Regulations.

BOARD

Mr. Higgins asked if there was any permeable surface on the property. There is 2% permeable surface according to the plan submitted. The property is essentially all sealed surface.

Mr. Gillick commented that he is pleased with the improvements to properties on M Street.

There was discussion of the gas meters at the property.

Mr. Higgins suggested that the first floor porches on the front of the building be kept open so that there is some sight line for pedestrians and oncoming vehicles when cars are backing out of the driveway.

Mr. Lessard asked about snow storage. Mr. Kenney said that if there is too much snow, they truck it out.

PUBLIC

No comments

BOARD

Mr. Lessard asked where the trash is stored. It is stored behind the building at 5 M Street. Mr. Kenney offered to put an enclosure there.

Mr. Lessard asked whether this was two lots. Mr. Ells said that as part of the condominium process the two lots would effectively be merged. All of the land will be declared as part of the condominium.

It was the consensus of the Board that the lot line should officially be removed.

Mr. Steffen suggested that the Town Attorney review the condominium documents.

Mr. Higgins commented that a standard Planning Board condition in all condominium conversions is that the parking spaces be assigned and marked on the plans.

MOVED by Mr. Gillick to grant the waiver from Subdivision Regulations Section V.E (Detailed Plan).

SECOND by Mr. Workman

VOTE: 6-0-0

MOTION PASSED

MOVED by Mr. Gillick to grant the condominium conversion at 3 and 5 M Street, subject to the following conditions:

- Arrangements for snow removal will be specified in the condominium documents.
- An enclosure for trash will be constructed.
- There will be a note on the plan that the lot line is to be eliminated/Notice of Merger.
- The porches of Units #1 and #2 will remain open to preserve some sight line for vehicles exiting the property. This will be specified in the condominium documents.
- Parking will be assigned and marked on the plans and on the site.
- Condominium documents will be submitted for review by the Town Attorney at the applicant's expense.
- A recordable Mylar and appropriate recording fees and seven (7) copies of the final plans will be submitted to the Planning Office.

SECOND by Mr. Lessard

VOTE: 6-0-0

MOTION PASSED

III. CONTINUED PUBLIC HEARINGS

6-36) Two Thirty Four Lafayette Road Realty Trust
 Amended Site Plan Review to construct phase II of an office building at
 234 Lafayette Road
 Map 189 Lot 11
 Owner of Record: Two Thirty Four Lafayette Road Realty Trust

6-37) Two Thirty Four Lafayette Road Realty Trust
 Special Permit to Impact Wetlands Conservation District at
 234 Lafayette Road
 Map 189 Lot 11
 Owner of Record: Two Thirty Four Lafayette Road Realty Trust

Chairman Emerick recused himself from this application. Mr. Workman assumed the Chair.

Bruce Scamman, Emanuel Engineering, presented this application. The applicant, essentially, wants to combine two previously approved building footprints into one

footprint. The Special Permit is to do some construction in the buffer for the parking expansion and associated drainage.

Mr. Scamman stated that he received feedback from the Town departments on the following:

- 1) Defining active and substantial development – Planner will do this.
- 2) Driveway permit – addressed with Department of Public Works.
- 3) Sewer permit – addressed with Department of Public Works.
- 4) Siltation control - addressed with Department of Public Works.
- 5) Fire Department - Commitment letter on sprinkler and fire alarm system - will be complied with.

BOARD

Mr. Higgins asked about the paving in the wetland buffer. Mr. Scamman described the work.

There was a question as to whether this was expansion of a nonconforming use. The variances were granted in 1988. There is no increase in square footage.

There was a question regarding handicapped parking spaces and ADA accessibility. The number of handicapped spaces has been increased and the property is ADA accessible.

Mr. Gillick commented that the applicant has returned with this application as a new Site Plan at the Planning Board's request.

Mr. McMahon asked if the signage would remain the same. One sign will be relocated.

There was a question regarding the Town sidewalk. Mr. Scamman said he could not commit for the applicant with respect to an easement for the sidewalk.

PUBLIC

Dr. Michael Briggs, 27 Drakeside Road, said that his initial concern was with expansion of a commercial site, but the applicant has been very responsive to his concerns. Evergreen plantings have been added as a barrier between their properties to allay his concerns. Mr. Scamman described the barrier planting that had been done at Dr. Briggs' lot line.

BOARD

Mr. Gillick asked if there was correspondence from the Conservation Commission on the Special Permit. Yes, there is.

MOVED by Mr. Gillick to grant the Special Permit to Impact Wetlands Conservation District at 234 Lafayette Road, Map 189 Lot 11, subject to the conditions specified in the Conservation Commission's memo of March 28, 2006.

SECOND by Mr. McMahon

VOTE: 6-0-0

MOTION PASSED

MOVED by Mr. Gillick to approve the Amended Site Plan Review to construct phase II of an office building at 234 Lafayette Road, Map 189 Lot 11, subject to the conditions as stated in the Town Planners memorandum of May 2, 2006, the Department of Public Works memo of May 2, 2006 and the Fire Department's memo of May 1, 2006.

SECOND by Mr. McMahon

VOTE: 6-0-0

MOTION PASSED

II. NEW PUBLIC HEARINGS

- 6-43) Brian Hayes
Site Plan Review to construct six (6) condominiums at
426 Winnacunnet Road
Map 208 Lot 48
Owner of Record: Brian Colsia, MAK Investments, LLC

Brian Hayes, Applicant, and Joe Coronati, Jones & Beach Engineers, presented this application. Mr. Coronati said this site is commonly known as Bill's Motor Court. The applicant has received approval from the Zoning Board to raze the cottages and construct six (6) new condominiums. There are two designs for the structures. Two (2) units that exist in the front of the property will remain, resulting in a total of eight (8) condominiums.

BOARD

Mr. Gillick asked the significance of the name Motor Court Condominiums. Mr. Coronati stated that this was a temporary identifier that his firm has for the project. Ocean Escape is the current name on the sign on the property, but that name will not remain either.

Mr. Higgins asked what variances were granted. Mr. Steffen said they were from Sections 3.8, 4.1.1, 8.2.3, and 8.2.4.

Mr. Higgins then asked for clarification of the access for the site. Mr. Coronati described the traffic flow.

As these are currently seasonal cottages. Mr. Higgins asked if the School Impact Fee would apply. The consensus was that the Impact Fee will apply.

Mr. McMahon stated that the variances granted seem to re-zone the property from mixed Residence A/Residence B to Residence B.

PUBLIC

No comments

BOARD

MOVED by Mr. Gillick to accept jurisdiction and continue the application to a date certain of June 7, 2006 and to send out the plans for departmental and engineering review. This review will include Aquarion Water, Unutil Electric and Northern Utilities for gas.

SECOND by Mr. Higgins

VOTE: 6-0-0

MOTION PASSED

- 5-36) Dovaro 12 Atlantic, LLC
Condominium Conversion at
12 Atlantic Avenue
Map 296 Lot 40
Waivers from Subdivision Regulations Section V.E (Detailed Plan) & VII.C
(Storm Drainage)
Owner of Record: Dovaro 12 Atlantic, LLC

Mr. Higgins recused himself for this application. Ms. Mercer sat for Mr. Higgins. Mr. Higgins, as a member of the public, sent an e-mail to the Board regarding past parking arrangements. This was included in the record.

Robert Palmisano, Applicant, and Ernie Cote, Surveyor, presented this application. Mr. Palmisano reviewed the changes made to the plans based on discussion at the last meeting.

Mr. Steffen noted a correction to the plan. The setback of the building on the Hardy property to the side line should be 10 feet not 6 feet as listed on the plan.

BOARD

Mr. Emerick asked if Mr. Palmisano had any discussions with an abutter regarding the parking in the driveway, as previously requested. Mr. Palmisano stated they had no further discussions.

Mr. Gillick asked if Mr. Palmisano would be willing to erect a fence if it is determined that a fence is an appropriate solution to the parking problem. The applicant is willing to do so.

Mr. Lessard asked about off-site parking. Mr. Palmisano said that his understanding was that off-site parking would not benefit his condominium conversion as the new zoning regulation requires at least one legal space per unit on-site.

PUBLIC

Ed Smith, 11 Boston Avenue, said there were formerly 4 to 6 parking spaces leased within 1 to 2 blocks of the property. He stated that he abuts one of the earlier condominium conversions, and parking is a problem at that property. He stated there are not enough spaces even with the plan changes made. He cited examples of problems he has experienced with abutting condominium owners using his property. He said stacked parking is his main concern as there will be fighting over spaces and SUVs and extended cab trucks will extend over the lines. He indicated it will result in turmoil and confusion for people. Stacked parking has been a nuisance for him in the past.

Ann Hardy, 14 Atlantic Avenue, stated that this is the first time she has seen the revised plans. She said that unless half of the back building is removed, an additional car couldn't park there. Mr. Palmisano said 6 feet is being removed from the building and there is currently 3 feet to the property line, which allows for 9 feet for parking space. Mr. Cote said they were taking off 6 feet all the way to the back. Ms. Hardy stated that, as a taxpayer, she is concerned that this will not result in adequate parking. She said she has not received any communication from the applicant.

Mr. Palmisano responded that there has been a parking problem with this property for 15 years and he clarified for Ms. Hardy that he is not rebuilding only remodeling the units.

Ann Hardy further explained that seven different owners will create an increased parking problem, and it will be a nuisance to the neighbors and to the Town. People will be constantly trying to get into and out of the stacked parking spaces. She also had a question about drainage. Snow removal was a problem prior to the current owner and three quarters of the time it was push over onto her side. She stated that the changes have simply added a fourth stacked parking space.

Dick Schuck, 18 Boston Avenue, stated if there was a way for the Board to deny this request, he urged them to do so for the reasons already stated by previous speakers.

Michelle Porter-Bourbeau, 10 Atlantic Avenue, stated garbage trucks have to back in and out of the street. She is concerned about trucks pulling into her driveway and other neighbor's properties to turn around. She stated that in the summertime cars in stacked parking spaces are frequently being moved to allow vehicles into and out of the inner spaces. This makes it difficult for emergency vehicles to get down the street if there is an emergency on the beach. She is opposed to the project because of the parking issue.

Ann Hardy stated that she has dealt with the applicant's parking problems at night three times since last July. She indicated she has raised some of her cottages to create parking for her tenants. Palmisano responded that his attorney advised him that he could not raise his building due to a variance situation.

Ed Smith commented on variances and nonconformity of the property.

BOARD

Mr. Steffen advised the Board that this is a pre-existing nonconforming use. It can only be denied on the basis of insufficient parking only if the conversion has an actual effect on the use of land or it is a nuisance or a threat to public health and safety. He added that the parking has to have satisfactory ingress and egress. Chairman Emerick added that he questioned the size of a couple of the spaces as well. He explained that the deck support poles extend over the front corner of one space which restricts access into it.

Mr. Lessard said that, technically, there are only two legal parking spaces. Mr. McMahon asked for clarification of the stacked parking. It is four deep with this plan. Does this comply with the ordinance? The consensus of the Board was that stacked parking doesn't comply with the Zoning Ordinance requirements.

Chairman Emerick indicated that the overriding sense seemed to be the nuisance factor with a conversion.

Mr. Gillick said that the Board can express a concern about public welfare and safety. He stated the Board is in a situation where it has to take a position that the Town Attorney can defend.

Mr. Workman stated that if the Board believes that the situation is deemed to be a nuisance, it is not necessary to prove that it will create a greater nuisance.

Mr. Palmisano said they are adding a sprinkler system to the building to address the fire safety issue. Mr. Gillick raised the matter of medical emergencies and emergency vehicles not being able to get into the property to respond in time.

Mr. Gillick said the Board is being challenged as to how to deal with these conversion situations and he does not have a solution for situations such as this one. He felt that the Court would not want to get involved in a local problem but all he has heard from the public this evening is that the conversion will be creating a nuisance situation.

MOVED by Ms. Mercer to approve the condominium conversion. She stated she would rather see seven owners at the property than seven year round tenants. She said the condominium association will have a Board of Directors for supervision of the parking situation, and a President, so that abutters will have only one person to deal with. She does not believe the fence would be a good solution because it will impair ingress and egress for Ms. Hardy. The Board further discussed the fence issue. Mr. Lessard stated he was in favor of the fence if it provided for protection of the properties. Mr. McMahon stated that a fence would not solve the problem and it would make the situation worse as it would not allow car doors to be opened. Ms. Mercer went on with her proposed conditions of approval. She would like to see a 30-day minimum rental period and 4 to 6 additional parking spaces leased off-site. If the abutter requires a fence, the applicant will need to put it up at his expense. She specified that another condition should be that

approval of the condominium documents by the Town Attorney. Parking will need to be assigned and marked on the plans.

SECOND by Mr. Gillick

VOTE: 1-4-1

MOTION FAILED

Mr. McMahon stated that the Board would be perpetuating a public nuisance in the area by approving the conversion. He stated that to utilize off-site parking goes against the newly adopted Zoning Ordinance amendment on parking for condominium conversions.

MOVED by Mr. Gillick to deny on the basis that granting the conversion would

- Be adding to and perpetuating a public nuisance with respect to parking ingress and egress.
- Health and safety of the public would be jeopardized because of the difficulty with emergency access.

SECOND by Mr. McMahon

Mr. Steffen stated that he felt the Board should provide for the record the specific reasons for the denial on nuisance grounds and the it’s adverse effects on the public health and safety. The Board indicated that the testimony that they heard over the past hour was sufficient in that regard.

VOTE: 3-2-1

MOTION PASSED

IV. CONSIDERATION OF MINUTES of April 19, 2006

Page 2 – first paragraph, add “Mr. Gillick asked for a letter for the file from Officer True to that effect.”

Page 2 – third paragraph, revise to read “Mr. Higgins asked when the dumpster at 7 Merrill is planned to be relocated, per the previous approval.”

Page 6 -second paragraph, “There was discussion of the public nuisance of the project” (remove “no”).

Page 10 – second paragraph, add “and would like to see a fence, plantings and soundproofing completed to see if it appeases the neighbor.”

MOVED by Mr. Lessard to accept the minutes as amended.

SECOND by Mr. Gillick

VOTE: 6-0-1

MOTION PASSED

V. CORRESPONDENCE

A letter from Mrs. Gebhart with respect to the Hampton Harbor projects was discussed. Mr. Gillick said the site plan approved explicitly stated that final location of utilities would be at the discretion of the utilities. Utility representations on site plans are approximate.

VI. OTHER BUSINESS

- Planning Board representatives for the Conservation Commission site walks for the next six months were assigned as follows:

May – Tom Gillick
 June - Tracy Emerick
 July – Keith Lessard
 August – Fran McMahon
 September –Bob Viviano
 October – Tom Higgins

- Mr. Higgins said the Board should give some thought to condominium hotels to establish criteria for the future. There is a question, among other things, as to whether or not these are residences. Mr. Steffen said he would be meeting with Glen Greenwood of the Rockingham Planning Commission to go over proposed zoning amendments.
- Mr. Lessard asked about the status of the Growth Management Ordinance Court matter. It is scheduled for May 15th.
- Chairman Emerick said he had received a resume for an individual interested in becoming an Alternate Member.

MOVED by Mr. Gillick to appoint Mr. William Faulkner as an Alternate for a two-year term.

SECOND by Mr. Workman

VOTE: 7-0-0

MOTION PASSED

MOVED by Mr. Lessard to adjourn

SECOND by Mr. Gillick

VOTE: 7-0-0

MOTION PASSED

Meeting adjourned at 8:54 PM.

Respectfully Submitted,
 Barbara Renaud
 Planning Board Secretary