

HAMPTON PLANNING BOARD – MINUTES
September 6, 2006– 7:00 PM

PRESENT: Tracy Emerick, Chair
Robert Viviano, Vice-Chair
Fran McMahon, Clerk
Jim Workman, Selectman Member
Keith Lessard
Tom Higgins
Tom Gillick
Bill Bilodeau, Alternate
Donna Mercer, Alternate
James Steffen, Town Planner

ABSENT:

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

POSTPONED HEARINGS

- 6-72) Richard A Clermont
Special Permit to Impact Wetlands to construct porch at
515 Winnacunnet Road #6
Map 222 Lot 118
Owner of Record: Richard A & Janice A Clermont

The Chairman stated that the Conservation Commission has requested a rehearing of this applicant's petition before the Zoning Board of Adjustment. Therefore, the applicant has requested a postponement of the Special Permit application.

MOVED by Mr. Viviano to postpone this application to the October 4th meeting of the Planning Board.

SECOND By Mr. Gillick

VOTE: 6-0-0 (Workman not present)

MOTION PASSED

I. NEW PUBLIC HEARINGS

- 6-70) Matthew L Stemska
Special Permit to Impact Wetlands Conservation District to replace
retaining wall at
67 Mooring Drive
Map 289 Lot 40
Owner of Record: Matthew L Stemska

Mr. Barry Postera and Mr. Matthew Stemska presented this application. Mr. Stemska stated that this was an after-the-fact application. He described the storm event that damaged the wall. He then described the repair work. He repaired the wall under the

direction of Mr. Eben Lewis of the Department of Environmental Services. All of the repair work is done at this time.

BOARD

Mr. Lessard stated he was at the Conservation Commission meeting and that the Conservation Commission does not oppose this application.

PUBLIC

No comment

BOARD

MOVED By Mr. Lessard to grant an after-the-fact Special Permit to impact the Wetlands Conservation District at 67 Mooring Drive, Map 289 Lot 40, subject to the stipulations stated in the Conservation Commission's memo of August 28, 2006.

SECOND By Mr. Gillick

VOTE: 6-0-0 (Workman absent)

MOTION PASSED

- 6-74) Edward Othmer
Special Permit to Impact Wetlands Conservation District to replace retaining wall at
59 Mooring Drive
Map 289 Lot 42
Owner of Record: Edward and Patricia Othmer

Mr. Higgins recused himself for this application. Ms. Mercer sat for Mr. Higgins.

Mr. Edward Othmer presented this application. He described the damage done by the May storm event. Mr. Othmer described his conversations with the State Department of Environmental Services. He stated that the Conservation Commission has signed off on his application. The work is not yet done.

BOARD

Mr. Gillick asked if the intent was to return the wall to its original state. Mr. Othmer indicated that it will be constructed of concrete instead.

PUBLIC

No comment

BOARD

MOVED By Mr. Gillick to grant the Special Permit to impact the Wetlands Conservation District at 59 Mooring Drive, Map 289 Lot 42, subject to the stipulations of the Conservation Commission memo of August 28, 2006.

SECOND By Mr. Viviano

VOTE: 6-0-0 (Workman absent)

MOTION PASSED

Mr. Higgins rejoined the Board.

- 6-75) Atlantic Breeze Suites LLC
Site Plan Review to construct 15 condo hotel units at
429 Ocean Boulevard
Map 265 Lot 18
Owner of Record: Henry J & Lucille Archambault, Trustees

Peter Saari, Casassa and Ryan, and Joe Coronati, Jones and Beach Engineers, presented this application. Mr. Saari stated the plan is to remove all existing structures and replace them with a 15-unit building. This would be an all-suites hotel with a condominium form of ownership. It is located between the Riviera and the Ocean Crest. The current structures do not conform to front, side or rear setbacks, nor do they have adequate parking. The proposed structure will meet all zoning requirements.

Mr. Coronati said the site slopes to the rear of the lot. Roof water will be piped down into two storm drains under the rear parking lot. The rear parking lot will be constructed of eco-pavers so that it will be permeable.

BOARD

In response to a question from the Board, Mr. Coronati pointed out the location of the trash area.

The Board asked why the building was so close to the road. Mr. Coronati said this was to keep it in line with the other buildings.

Mr. Higgins noted that there was no sign. He feels this would be necessary for a hotel. He also feels that a front parking space might be desirable for registering and inquiring about rooms.

Mr. Gillick asked how many rooms there would be per unit. Rear units will have two rooms and ocean side units will be a single room.

In response to Mr. Gillick's question, it was confirmed that this will be a hotel for transient use and not subject to school impact fees.

Mr. Lessard is not in favor of vehicles stopping at the sidewalk to pick up trash. He also asked about the parking aisles. The width of the parking aisle ranges from 22 feet to 27 feet. Mr. Lessard noted that doors open into the travel path of vehicles. He also referred

to a note regarding the transformer pad. The location is not indicated. Mr. Gillick agreed that the Planning Board should know the location of the transformer pad. Mr. Coronati confirmed that there would be 9 studio units and 6 suites.

Mr. Lessard asked about the snow storage location. Mr. Coronati said they do not anticipate full use during the winter months, making some parking spaces available for snow storage.

Mr. Higgins asked the height of the garage door. That will be addressed with the architect at the next meeting.

Mr. McMahon asked how the kitchenettes would be configured.

PUBLIC

John Christianson, 12 Epping Avenue, said that, in his opinion, once the kitchenette is in, it is a dwelling unit and can be lived in year-round. He stated the experts say they cannot police use as dwelling units. At that point, there is no recourse with respect to having children living in the units in school. He suggested that the covenants should make it clear that this structure does not consist of dwelling units.

Chairman Emerick stated that the way this is dealt with is that the Certificate of Occupancy states the units are for transient use only and not to be used as primary residences. Hotel guest/owners cannot vote or register their vehicles with the address. The Board has not addressed the matter of children in the schools. The 90-day rule comes from the RSA's to make a distinction between a "transient" and a "tenant".

Mr. Christianson asked the Board to give serious consideration to the fact that the hotel units will be used as dwelling units.

Andrew Guthrie, 10 Boston Avenue, asked for clarification that the units cannot be used as a primary residence. He then quoted the definition of a dwelling unit. There was discussion of a dwelling unit versus a hotel suite. He then referred to Hampton's multi-family ordinance and the 40-foot setback required in that ordinance.

BOARD

Mr. Gillick stated that the Planning Board is working hard with the Town Attorney to deal with all of the complications arising with these types of structures. That process is not completed yet.

There was further discussion of the ambiguity surrounding permanent versus temporary food preparation devices.

Mr. Lessard, who works for the Hampton schools, stated that once a child is in the Town he/she is to be brought to school and educated, whether these children are homeless or have a dwelling. He said it is the law that children have to go to school.

Mr. Steffen said that there are several hotels in the area that have microwave ovens and refrigerators. These are typical hotel amenities today.

PUBLIC

Mr. Christianson stated that by having these kitchenette units, it will result in year round rental, which in turn will result in more children in the school system. He said if you eliminate the kitchen, you eliminate the problem. He disagrees with not subjecting the units to the School Impact Fee.

Ms. Mercer asked if the Zoning Ordinance has a definition of a hotel. Mr. Steffen read the definition of a hotel in the Zoning Ordinance.

(Workman joined Board)

Mr. Guthrie listed hotels in the area with microwaves. He specified which had cabinets and sinks.

BOARD

Chairman Emerick asked if this should be considered a complete application in the absence of the location of the transformer pad.

Mr. Lessard said he is still concerned with the aisle width and doors opening into the driving aisle.

Mr. Viviano wanted to note that the Board does have concerns with setbacks, aisle width, absence of a parking space in front and other issues.

MOVED By Mr. Gillick to accept jurisdiction, send the plans for departmental review (including utilities) and continue the application to a date certain of October 18th.

SECOND By Mr. Viviano

VOTE: 7-0-0

MOTION PASSED

II. CONTINUED PUBLIC HEARINGS – PLANNING BOARD 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

John Anthony Simmons, applicant, and Ernest Cote, surveyor, presented this application.

Mr. Steffen said that the Board first heard this application on March 1st, 2006. The Board didn't accept jurisdiction at that time because the application was determined to be incomplete. When it was first continued, it was sent out for fire department review. The Fire Department has no problem with the application. The revised plan submitted shows more parking spaces and contours that were not on the original plans.

Mr. Higgins asked if there was a concern previously about the ability of fire trucks to enter the driveway.

Mr. Simmons said the first concern was that the plans were not to full scale. That has been done. The topography has also been included. The parking configuration has been changed. The new elevations show that they are no longer doing a basement because of insufficient parking. The notes show that the propane tank will be removed, and they will be getting gas from the street. Trash amounts will be inconsequential. There is a different footprint from the original plan. The structure is two feet wider east to west. The entranceway has been reconfigured with the extra width. The current plans are designed to have separate offices on the first and second floors. He believes that all of the concerns expressed previously have been addressed.

Mr. Simmons confirmed that the first floor bathroom is handicap accessible. The building is essentially handicap accessible because of the grade and configuration. It was noted that accessibility is not a requirement.

There was discussion of the 11-foot driveway in the front. Mr. Steffen read the Fire Department's letter on the application. Mr. Gillick asked the Planner if, in his opinion, the Fire Department's letter is applicable to the current plans. Steffen replied yes.

PUBLIC

No comments

BOARD

Mr. McMahon asked why they asked for a waiver from detailed plans for storm drainage. Mr. Cote said there was no change in grade. The lot drains to the rear and there is a swale at the railroad tracks. Mr. McMahon noted that with the increased size of the structure there is more impervious surface. He indicated that he has difficulty granting a waiver for a drainage plan. Mr. Higgins noted that the lot is 240 feet in length. He noted that the driveway will be gravel and permeable.

Mr. Lessard asked how many office units are planned. Mr. Simmons said it would be no more than three. Mr. Lessard said he believed that floor plans are needed. The 11-foot driveway to the rear of the property is a long way to travel on gravel. He is concerned as to which egress would be the main egress to the facility. He is also concerned that tenants and/or subsequent owners may want a paved driveway. He agrees with Mr. McMahon that a detailed storm drainage plan appears to be needed. Chairman Emerick indicated that this could be accomplished with pavers.

MOVED by Mr. Lessard to deny waivers to Site Plan Regulations, Section V.E. Detailed Plan and Storm water drainage control plan & Section VII.B.1 Parking Lot Design, and to request floor plans. The reason for this denial is there are questions as to whether water will be disposed of on site.

SECOND by Mr. McMahon

There was discussion of the motion. Mr. Simmons withdrew his waiver requests. Mr. Lessard withdrew his motion.

MOVED by Mr. Gillick to accept jurisdiction to a date certain of October 18th and to send out for department review, including utilities.

SECOND by Mr. Lessard

VOTE: 7-0-0

MOTION PASSED

Mr. Higgins suggested that the applicant include a walkway in the plan, since there are going to be multiple units. It was also agreed that the applicant would provide floor plans.

- 6-52) Keith Crowley/NTC Real Estate Development LLC
Site Plan Review to construct a 31-unit hotel condominium at
31-33 Ocean Boulevard
Map 296 Lots 20, 32 and 33
Owner of Record: Keith Crowley/NTC Real Estate Development LLC
JURISDICTION ACCEPTED: June 7, 2006
APPROVAL TO EXTEND DEADLINE GIVEN: August 2, 2006

Mr. Higgins recused himself from this application. Mr. Bilodeau sat for Mr. Higgins.

Peter Saari, Casassa and Ryan, and Joe Coronati, Jones and Beach Engineers, presented this application. Mr. Coronati distributed revised plans sets.

Mr. Coronati said since the last meeting, there was an on-site meeting with Alan Garland from the State Department of Transportation, the Town's engineer and the Town Planner. The Town Engineer concurred that drainage from this site doesn't cross the road. This property's system goes into the Town system that drains down P Street. Mr. Coronati said the Town Engineer still has some concerns, but he doesn't see any that could not be conditions of approval.

The Planner agreed that the remaining concerns could be stated as conditions of approval. He also stated that, with respect to the seasonal high water table and flooding of the storm-tech system these will be addressed in the geotechnical report. Mr. Coronati said borings have been done on-site but the reports have not as yet been received. He does not anticipate any water table issues. Mr. Steffen indicated these could be signed off later by Ambit Engineering. Mr. Steffen asked Mr. Coronati to comment on the engineer's suggestion that the third entrance might be eliminated with redesigned parking. Mr. Coronati said that they have not found a parking configuration that could eliminate an entrance.

BOARD

Mr. Gillick asked if the Planner had other recommendations other than those indicated in his September 6 memo. He also asked if the Planner feels the Board should hold off until geo-technical information is received. Mr. Steffen said that can be a condition of approval if it is required prior to the issuance of a Building Permit. Mr. Steffen read through his proposed conditions of approval: A final building design, stamped by a professional structural engineer that includes an analysis of the soils, the groundwater table, the basin and building system should be presented for approval prior to the issuance of a building permit. This final design needs to include a system maintenance and replacement plan. If approved, condominium documents must be submitted for approval by the Town Attorney to ensure incorporation of conditions imposed by the Board, compliance with the RSAs and protection of purchasers and the public. The fact that the units cannot be utilized as a primary residence needs to be indicated on the final site plan and in the condominium documents and on the Certificate of Occupancy. An escrow account in the amount of \$2,000 needs to be established for inspection fees.

There was discussion of including the 89-day maximum occupancy period in the motion. Mr. Viviano indicated that he feels this restriction should be in the motion.

The Board noted that there is no sign indicated on the plans. Mr. Coronati said that the Harris Real Estate sign will remain and be utilized. There will be temporary signage during construction.

Mr. McMahon asked about information that is needed prior to issuance of a building permit. He asked how this is communicated to the Building Inspector. The Building Inspector checks conditions of approval before issuing a building permit. Also, the Town Clerk needs to be notified, since cars can't be registered at that address.

PUBLIC

Walter Wyse, 3 River Avenue, addressed drainage. He is concerned that the project has more than 85% impervious surface. He is concerned that drainage will negatively affect him as an abutter. He doesn't want more damage to his property.

There was discussion of an inconsistency in the calculation of the building footprint. Mr. Coronati said that the impervious surface would be under 85% and the numbers were revised on the plans.

Andrew Guthrie, 10 Boston Avenue, quoted regulations. He asked the width of the driving aisle. It is 22 feet. He then spoke to deed restrictions on this formerly leased land. He indicated that at Town Meeting the citizens have voted to keep the same covenants. He said the 1899 covenants were reconfirmed in 1982 and 2003. He emphasized that he is opposed to this project. He then read a petition which he alleged to be from every abutter to the project indicating that they are opposed to it. He then addressed the multi-family article in the Zoning Ordinance. The Chairman indicated that since these were not dwelling units, the multi-family ordinance did not apply.

Chairman Emerick said this application calls them hotel units, so that's what they are.

Mr. Guthrie then read from State regulations, specifically 356-B: 3, 356-B: 5, 674:43, and 153:1.

John Christensen, 12 Epping Avenue, then asked for the dimensions of the building. Mr. Coronati stated that it is 137 feet wide by 83 feet deep by 50 feet high. Mr. Christensen then discussed definitions of kitchens. He stated that he believes the units will be used as permanent residences and that there is no means of enforcing transient use of the facility. He then began discussing the interior furnishings of the units. Chairman Emerick stated that was beyond the scope of the Board. Mr. Christensen then indicated that visitor parking would be a problem for the neighborhood.

Theresa Wyse, 3 River Avenue, stated she is concerned that the transient nature of the facility is not enforceable. She asked how the project would be impacted by the change of traffic flow on P Street. It will not. She reinforced her statement saying noting the traffic congestion on Ocean Boulevard.

Chairman Emerick noted that Floor Area Ratio will be addressed again this year in the zoning work. That might restrict a project of this density, but at this time, this project is an acceptable density.

Ted Guthrie, 20 Boston Avenue, stated he wanted to speak to the Master Plan. He asked if this was the type of development, at this density, that the Town of Hampton wants. He commented on the good condition of the small properties in this part of Town. He reiterated that he questions whether the Master Plan intended this type of structure for this part of Town.

Tony Kelleher, 1 River Avenue, asked if there were any concerns from the Town departments. Mr. Steffen said the Department of Public Works was concerned about curb cuts. There was a site visit and it was determined that the new project would be an improvement, with respect to curb cuts. Police didn't have any issues. Fire Department concerns were addressed. All other concerns have been addressed. Mr. Kelleher then

asked if there would be a property management team on-site. Chairman Emerick said that was an operational issue for the condominium.

Walter Dupree, 30 Ocean Boulevard, believes the project shouldn't be voted on until the definition of hotel suite is solidified and formalized. He is concerned about the safety of pedestrians walking by the entrance to the garage.

Andrew Guthrie, 10 Boston Avenue, stated he believes the landscaping is part of the setback, so the building would have to be smaller to accommodate the landscaping as part of the footprint. Chairman Emerick clarified that the setback is for buildings.

BOARD

Mr. Coronati stated there are other hotel condominiums in town. He referenced the Ocean Club and condominium conversions that have been done (ex: 6 Ashworth Avenue and 18 Ocean Boulevard).

Mr. Steffen explained that the Planning Board doesn't have free reign under Site Plan Review. This project is in a Business Seasonal zone and it is a permitted use. Site plan regulations do not dictate how a building can be built. The applicant has met all regulations. No variances are required and the use is allowed. There is only so much the Board can do with respect to the application. If the applicant came in as a non-condominium hotel, the requirements would be the same. There have been multiple reviews. Most issues have been satisfactorily addressed. Those that haven't will need to be taken care before building permits are issued.

Mr. Lessard asked how the hotel would be operated. Mr. Saari said the office on-site would handle rentals. Signage will probably be up to the rental agent. Mr. Lessard asked if there was a traffic review. The State Department of Transportation has deemed it to be traffic safety improvement with the proposed driveway cuts. Mr. Lessard asked about the drip edge, ice formation and gutters. Mr. Coronati responded.

Mr. Gillick said the Department of Public Works is in the process of drafting a Town-wide drainage plan, which will be presented to the Capital Improvement Program Committee. He expects that the CIP Committee will recommend that funds be set aside for this drainage plan to be implemented over a 6 – 10 year period. He said that since he also represents the Town on the New Hampshire Estuaries Management Committee, it is imperative that storm water be separated from wastewater. This project may be almost completed in Hampton.

Mr. Gillick said he understands the concerns of neighbors, but this is a land use board and the applicant has met all requirements.

MOVED by Mr. Gillick to approve the Site Plan application to construct a 31-unit hotel condominium at 31-33 Ocean Boulevard, Map 296 Lots 20, 32 and 33, subject to

conditions expressed in the Planner's memo of September 6, 2006 plus the following conditions:

- Escrow of \$2,000 for site work inspections plus payment of the \$2,000 review escrow previously established.
- The fact that the facility cannot be used as a Primary Residence is to be included in the site plan, condominium documents and Certificates of Occupancy

SECOND by Mr. Workman with the understanding that the motion is to approve a hotel, irrespective of how it is owned. He said he doesn't feel it's the right building for the spot, but that can't factor into the Board's decision.

Mr. Gillick noted that the Town is working on changing regulations in the future.

VOTE: 5-2-0

MOTION PASSED

Mr. Higgins rejoined the Board

III. CONSIDERATION OF MINUTES of August 16, 2006

MOVED By Mr. Bilodeau to accept the minutes as recorded.

SECOND By Mr. Lessard

VOTE: 6-0-1

MOTION PASSED

There was discussion of previous items of concern. These included the Interim Town Manager's workload and developing a definition of a hotel kitchen.

IV. CORRESPONDENCE

Mr. Steffen said he still hasn't heard from Glen Greenwood at the Rockingham Planning Commission on the schedule for presenting proposed Zoning Amendments. He will follow up with him. He hopes to have him scheduled for the next meeting.

V. OTHER BUSINESS

Chairman Emerick said it would be appropriate to have an open forum on growth management at the beginning of the October 18th meeting. Mr. Lessard suggested a 2-hour limit for this agenda item. The Board agreed.

Chairman Emerick then said he attended the Board of Selectmen's meeting regarding the Ross apartments condominium conversions. One thing that came out of that was the suggested institution of a Housing Authority. He said he would like to entertain the Board's thoughts on the issue.

Mr. Gillick stated that in recent testimony before this Board and the Board of Selectmen, there is a shortage of "safe and sanitary dwelling accommodations available at rents which persons of low income can afford" (quote from RSA 203.2).

MOVED by Mr. Gillick to authorize the Chair to write to the Board of Selectmen asking them to explore the creation of a Housing Authority in the Town of Hampton as a possible solution to the problem referenced in RSA 203.2. That would require a warrant article at the next Town Meeting. The Board of Selectmen would then appoint the Authority. This would be a response by the Planning Board to the concerns expressed to it.

SECOND by Mr. Viviano

VOTE: 7-0-1

MOTION PASSED

ANNOUNCEMENTS:

On September 13th there will be a meeting at 5:00 PM at the Ashworth Hotel on SB5, which includes a \$10 million bond issue for improvements at the beach, including the band shell.

On September 14th there will be a meeting at 7:00 PM in the Selectmen's Meeting Room regarding the New Hampshire Department of Transportation's plans to rehabilitate the Route 1A (Underwood Memorial) bridge.

Mr. Lessard asked how the Planning Board could support the Building Department so that they can have resources to do enforcement, health & safety compliance, and follow up on complaints, etc. He wants to send a message to the public that the Board supports the Building and Planning Departments in securing the resources necessary to perform these functions.

Chairman Emerick said there is an authorization for a part-time plumbing inspector that will help the Building Department. Mr. Steffen also noted that he has requested a part-time Conservation Coordinator in his budget.

Mr. Viviano asked if the Board would meet to talk about hotel definitions etc. Mr. Steffen said he wanted to do that at the next meeting. Attorney Gearrauld's memo will be discussed as Other Business at the next meeting. There was additional discussion of ambiguity in the definitions for kitchen, hotel, dwelling unit, etc. The Board wants to ensure consistency in interpretation from one application to another.

MOVED by Mr. Workman to adjourn.

SECOND by Mr. Lessard

VOTE: 7-0-0

MOTION PASSED

Meeting adjourned at 9:50 PM.

Respectfully Submitted,
Barbara Renaud
Planning Board Assistant