

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

PRESENT: Fran McMahon, Chair
Mark Olson, Vice Chair
Tracy Emerick
Rick Griffin, Selectman Member
Brendan McNamara, Clerk
Mark Loopley
Jamie Steffen, Town Planner

ABSENT: Keith Lessard

I. CALL TO ORDER

Chairman McMahon began the meeting at 7:00 p.m. by introducing the Board members and leading the Pledge of Allegiance to the flag.

II. ATTENDING TO BE HEARD

- Use Change Review – Heide Conlin & Jennifer Blankenship (Pearl’s Hamburgers) – 421 Lafayette Road – vacant; prior retail use to take out restaurant

Ms. Conlin appeared and stated Ms. Blankenship could not attend. Ms. Conlin stated that she would like to place a 1963 trailer (modified) on the current foundation for a take-out restaurant. Ms. Blankenship arrived.

Mr. McNamara stated the Zoning Board of Adjustment did not want an outdoor bathroom facility. Ms. Blankenship responded that it would not be for public use, and it would be in the trailer connected to the Town sewer system. Mr. McNamara asked how high the area is for the public to stand at the location to place an order. Ms. Blankenship said she doesn't know the height from the ground to window but she would also like to add a wooden platform with rails. There will be a fold down counter. Mr. McNamara stated it has to conform to ADA requirements with 38” height maximum. Ms. Blankenship answered it would be. Mr. Emerick stated he thinks it is between 42” to 45”. Mr. McMahon stated the Building Inspector will address that. Mr. McNamara stated it can be bare floor; it does not have to be on a platform. Mr. Loopley asked what variances were granted. Mr. Steffen read the requirements of sections 11.5 and 11.5.a. Mr. McNamara asked about parking spaces. It was answered that there would be four and that they would be for patrons and employees. Deliveries will be done prior to opening. They will also use the Town lot for parking. Mr. McMahon asked about landscaping and the applicants expect to do the landscaping. Ms. Blankenship said they will bring green space to the area. Trash will consist of municipal trash receptacles. There will be a place for residents to put their trash.

Mr. Griffin asked about the Town’s position on trash. He's not sure the Town will take more trash. This is an issue that is on-going and being re-defined. They may have to have a dumpster. Mr. Griffin asked them to research that issue. Mr. McNamara asked if it is their

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

intention to police the site to make sure it stays clean and free of trash. Ms. Blankenship will be on top of trash issues; they want it to be appealing and they plan to be there six days a week. Mr. McNamara asked about signage. Mr. Olson asked if it will be three season and if there are rules on that. Mr. Griffin noted that DPW can tell them about dumpsters as well.

Mr. Olson noted that the plans were very helpful. He asked about the table umbrellas and light fixtures and whether it was their intent to do these things. Ms. Blankenship said that the site is very dark right now and that they want to bring an ambiance to the area with secure lighting. Mr. Olson asked about planters. Ms. Blankenship answered that they will be packed up at end of season and closed down. Mr. Griffin asked if they would make the site available for public parking. Ms. Blankenship answered that they will not open the area up for general parking but might consider an arrangement to provide limited parking.

Mr. McMahon asked about the seasonal use and noted they would be allowed to operate year round.

MOTION by Mr. Emerick to approve the change of use.

SECOND by Mr. Olson.

VOTE: 6 – 0 – 0

MOTION PASSED.

IV. CONTINUED PUBLIC HEARINGS

13-005 175, 165 & 155 Island Path (continued from 1/2/13)

Map: 280, Lots: 22-1, 22-2 & 22-3

Applicant: Ezra Real Estate, LLC & Attn: Aaron Brown

Owners of Record: John & Ann Hangen (22-1) & Aaron Brown (22-2 & 22-3)

Special Permit: Construction of two townhouses (one duplex).

Mr. Aaron Brown appeared. He stated that Joe Coronati of Jones & Beach Engineers was unable to attend. Mr. Brown stated he has submitted a proposal for timing on completion of work involved with the special permit. Mr. Coronati has forwarded the letter to the Planning Board. He proposes to remove the plastic lining under the stone within one year. His business partner has recently removed the storage trailer on the site.

PUBLIC

Abutter Mr. Belanger (Jr.) appeared. He stated that he has done more research on the lots and the previous permits. He requested that the Board not allow the permit for any structures as far as remedying the issue. He discussed the original shoreland protection waiver (2008) and its conditions. He distributed additional information on that to the Board members. He noted that there were conditions that weren't met and he feels that if they are not met moving forward granting a permit would be negligent. He discussed the wetlands permit issued by NH DES with Frank Richardson. He noted that NHDES will not extend the permit as the conditions were not met. He stated that the removal of plastic lining was

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

supposed to be done within a certain timeline. He read aloud on page 2, #15 which discusses attorneys' fees, etc. Mr. Belanger stated he believes Mr. Brown is negligent. He believes that the houses were built on illegal lots - did not meet codes initially. He stated that there is a parking lot and a stone wall without permits. He noted illegal additions to the property are on a non-conforming lot.

PUBLIC

Mr. Jay Diener from the Conservation Commission appeared. He stated there are no other remedies for the other violations, just for the removal of plastic. He discussed the remedies related to the building the duplex. These remedies should happen whether the duplex happens or not. Mr. McMahon asked Mr. Diener about the Conservation Commission's December 27th letter to the Board. He noted that it does not address the prior negligence. Mr. Diener stated that was an oversight by the Conservation Commission. Violations exist and they should be remedied.

Mr. Belanger (Sr) appeared. He stated that he sold the house to his son. He asked what makes the lot conforming. He asked if it's the improvements. Mr. Steffen responded that the lot they are putting the duplex on is a conforming lot. Mr. Steffen stated it was approved in 2008. Mr. Belanger asked to know why it's conforming. Mr. Steffen stated it received a variance on the wetlands requirement. They needed certain amount of upland and the ZBA granted relief on that in 2008. Mr. Belanger, Sr. stated a wall was put there illegally by Mr. Hangen. He also stated he created a parking lot without a permit. Mr. Griffin noted it is the size and frontage that makes the lot conforming. Mr. Belanger, Sr. stated that because the lot was classified as "conforming" by a variance then that changes the area from a single family to a duplex under the Shoreland Protection Act. He discussed the State requirements under 4.8.b.11. Mr. Steffen responded that the Planning Board doesn't enforce State regulations. Mr. Belanger asked how Mr. Hangen received a permit to build there. Mr. McNamara answered that the variance allowed him to build what was built. Mr. Belanger said everyone in the world knows what happened there. Mr. Loopley responded that the Planning Board cannot change what the ZBA has allowed. Mr. Olson asked why the variance was granted.

There was further discussion about the variance granted and the shoreland protection rules. Mr. Belanger stated that Joe Coronati of Jones and Beach Engineers did not appear because he got a call from Mr. Richardson of NHDES stating that the permit was not going to be extended in March because they haven't removed the plastic liner and all other requirements.

Mr. McMahon responded that Mr. Richardson can contact the Planning Board. Mr. Steffen responded that the wetlands bureau also consults with the Conservation Commission before extending permit approvals. Mr. Belanger said the lot is for sale and there is no intention to fix the lot and it's the same old story.

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

BOARD

Mr. Emerick said it's a catch 22 situation. He stated that the permit posted is to construct two townhouses and that's all the Planning Board can vote on. Mr. Steffen wants to separate the violation items from the work that would be done with the construction of the duplex. He feels it could be conditioned as such under the special permit approval. Mr. Loopley noted that the only schedule the Board has seen is what is contained in Joe Coronati's letter about removing the plastic lining.

Mr. McMahon discussed violations on the property. He stated that those should be corrected now. Mr. Brown responded that there is an existing NHDES permit that expires in March of 2013. He indicated that Mr. Coronati expects the permit to be extended by the State. Mr. Brown would like the special permit issued so that they can deal with the problems. He stated he is okay with altering the application but he is not sure what the process is. There was discussion about not issuing the CO until all violations are taken care of and that was fine with Mr. Brown. He also indicated that he is fine if the Board wants separate timelines – how specific do they want to be.

MOTION by Mr. Loopley to approve the special permit for a one-year period with all violations being taken care within that time - that would include the pavement and stone wall removal, among the other violations.

SECOND by Mr. Emerick.

It was reiterated that until everything is fixed, the duplex construction cannot begin. The Board discussed the condition of one year for all violations to be resolved. The one-year period would still remain in effect but the duplex could not be started until all conditions are met. Mr. Olson stated he would like to discuss this.

SECOND by Mr. Griffin.

Mr. McMahon stated the Planning Board would now address Mr. McNamara's amendment to Mr. Loopley's motion. Mr. Olson discussed the history of the site. The lot was created in the past, and the Board doesn't need to be concerned with that - because the ZBA has said it was okay. Mr. Olson thinks that's not right. He stated that he feels we are penalizing Mr. Brown for damages that have not been dealt with on another lot. Mr. Olson asked if Mr. Hangen is out. Mr. Brown stated "yes". Mr. McNamara stated building a nice new unit would be fine. Mr. Olson noted the damage is already done. Mr. Brown stated he thinks Mr. Hangen still owns the property on the other end.

Mr. Steffen responded that there are violations on that property. He discussed what occurred with the original approvals of the subdivision and special permit. Everyone thought the problems would get corrected with those approvals. Mr. Olson asked if this originally came to the Town by Mr. Hangen or Mr. Brown. Mr. Brown responded that he had a purchase and sale agreement with the Hangens to the buy house contingent upon getting subdivision approval. Mr. Brown stated that most of the violations are on the Hangen property – the little narrow white house that has the finger (peninsula) that goes out.

Mr. Griffin asked why the Town Attorney isn't involved in this. Mr. Loopley said the Board did not send a letter to Board of Selectmen asking for enforcement. Mr. Griffin said if

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

something is supposed to be done that isn't being done, it should go to the Board of Selectmen. He said this should go to the Town Attorney. Mr. Griffin stated he will probably abstain from this. He thinks the Town Attorney should be asked on the status on this. He feels it is authority gone amuck – Mr. Hangen was a DPW director at the time. There was more discussion about what is going on with the property and who still is involved.

Mr. Diener responded that there is a schedule for dealing with violations and it should go through the process of sending certified letters. Mr. Griffin feels that this should be done. He will then tell us what to do with the first lot. Mr. Diener responded that we aren't at that point yet. He wants violations corrected first on the end lot. Mr. Diener stated that he has been in touch with Mr. Hangen. Mr. Griffin reiterated something needs to be done on this as soon as possible.

Mr. Brown stated that when he acquired the property nothing was disclosed to him on the previous problems. He indicated that he discovered the wetlands issues through Mr. Gove of Gove Environmental. Mr. Brown stated that he would correct the global issue - original Hangen house, the second home (rental property which they still own) and the new lot. He is expecting to take care of all violations on the three lots. Mr. Brown's explained that originally his approval was tied to everything being cleaned up before a certificate of occupancy was issued. There was discussion about completion of the violation work and whether he could finish the construction on the duplex within two years. Mr. McNamara responded that after he starts construction and starts fixing the violations, if all violations can't be fixed and he can't get to them all, he sees the construction of the duplex going forward and other less minor violations may never get fixed, as has been seen in the past. Mr. Brown stated he would like it tied the occupancy permit. He felt the Board would still have the hammer. Mr. Steffen stated that the Building Inspector will check with Ms. Dionne, Conservation Coordinator, or himself, to make sure stipulations are complied with.

Mr. McMahan said the violations are identified. He expressed his concern that Mr. Brown may or may not build what he wants to for years leaving the violations to remain for as long as Mr. Brown wants to sit on it. Mr. Brown responded that he wants to move forward and take care of violations. He's not opposed to timelines.

MOTION by Mr. Loopley to mandate that the violations are resolved within one year. Mr. Brown cannot obtain a building permit until violations are taken care of. Mr. Brown asked about construction. Mr. Loopley responded to come back in a year after all of the violations are corrected. Mr. Brown asked the Board if it could grant the permit but also allow him two years to complete the duplex. Mr. Loopley responded if in a year all violations are taken care of, then Mr. Brown can come back to the Board for the duplex.

Mr. Brown stated that his concern is that he will need to spend \$30,000 to correct the site, and then have to come back in 11 months and not get it renewed. It was stated that if the violations are all taken care of the permit will be granted.

Mr. McMahan thought that the duplex could be started. Mr. Olson stated that the remedies should happen first - all violations corrected in one year. Mr. McNamara reiterated that if the violations were partially corrected and the building begins what would the Town do then.

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

Mr. Loopley responded that if all violations are corrected no one on the Board will deny the special permit to build the duplex.

MOTION AMENDED by Mr. McNamara confirming that Mr. Brown cannot start construction of the duplex until all of the violations are corrected. Mr. McNamara stated if the violations are taken care of in six months then he could start the construction of the duplex then. The approval, however, is good for two years.

SECOND by Mr. Olson to Mr. Loopley's motion as amended by Mr. McNamara.

VOTE: 5 – 0 – 1 (Griffin)

MOTION PASSED.

Mr. Loopley's motion is now moot.

Mr. Brown stated his interpretation is that this permit will be good for two years provided that everything is squared away from one year from this meeting.

IV. NEW PUBLIC HEARINGS

V. CONSIDERATION OF MINUTES of December 5, 2012 and January 2, 2013

MOTION by Mr. Emerick to approve the December 5, 2012 Minutes.

SECOND by Mr. Olson.

VOTE: 6 – 0 – 0

MOTION PASSED.

MOTION by Mr. Emerick to approve the January 2, 2013 Minutes.

SECOND by Mr. Olson.

VOTE: 6 – 0 – 0

MOTION PASSED.

VI. CORRESPONDENCE

VII. OTHER BUSINESS

- Driveway Approval – Temporary Logging Access – 478 Exeter Road

Mr. Steffen discussed approval of driveway permits. For a typical permit the Board has delegated to DPW as far as the review and approval of applications. In this case, the applicant is proposing to log the property and they need a second driveway for a temporary logging access. There is nothing in our driveway regulations that that speak to this. Mr. Steffen stated he has researched other communities that regulate temporary driveways, one being Rye, NH. Usually the temporary permit is given for six months. He found that the DPW director can extend it for another six months if necessary. Mr. Steffen said he's not sure if they need any wetland permits for actual logging. Mr. McMahan asked if this property was the one with the conservation easement. It is not.

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

MOTION by Mr. Emerick to grant the driveway permit for a temporary logging access for a period of six months.

SECOND by Mr. Olson, but he asked who details the damage to the new road. Mr. Steffen responded that it would require a bond for damages. Mr. McMahon asked if we could get more information. Mr. McNamara said it could be tabled for a couple of weeks until the next meeting. Frank Swift of DPW is worried about the impact on newly paved Exeter Road. Mr. Steffen discussed other regulations on bonding. Mr. Steffen stated that they have provided a \$500 bond that is in the hands of DPW but that is not enough. Mr. Emerick said the bond amount should be determined by DPW. Mr. Griffin stated that if they could do this project without damaging the road he's good with it.

MOTION by Mr. Emerick to approve the temporary logging access contingent furnishing a bond sufficient amount as determined by DPW.

SECOND by Mr. Olson.

VOTE: 6 – 1 (McNamara) - 0 MOTION PASSED. - As long as the bond is paid before they do the work.

Mr. Emerick stated that a Selectman and a SAU 90 board member are interested in making updates to the CIP. He explained that the CIP Committee can't be called upon now as the Committee has completed its update and the generated the report. He discussed having the document as a management tool. He noted that it had gone to the town administration by December 30th to be included in the 2012 Town Report. He feels that if it gets changed, it's not the end of the world, but it won't match what the Committee has produced. Mr. Griffin responded that he thinks it's up to Mr. Emerick.

Mr. McMahon said it should be as it is to a point certain and that's where it stays. If they want to amend within their own purview that's fine, but what is accepted by the Planning Board goes to the press. It was discussed that the Board of Selectmen could take the document and chooses to implement what they want from it. Projects get put on warrant for March and other get placed in the new budget. The Board concurred that the yearly report will be it.

VIII. ADJOURNMENT

MOTION by Mr. Emerick to adjourn.

SECOND by Mr. Mr. Olson.

VOTE: 6 – 0 – 0 MOTION PASSED.

MEETING ADJOURNED: 8:17 p.m.

Respectfully submitted,
Laurie Olivier, Administrative Assistant

****PLEASE NOTE****

HAMPTON PLANNING BOARD

MINUTES

January 16, 2012 – 7:00 p.m.

**ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.
MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING**