

HAMPTON PLANNING BOARD

MINUTES

December 4, 2013 – 7:00 p.m.

PRESENT: Brendan McNamara, Vice Chair
Tracy Emerick
Fran McMahon, Clerk
Mary-Louise Woolsey, Selectman Member
Keith Lessard
Mark Loopley
Anthony Ciolfi, Alternate
Jamie Steffen, Town Planner

ABSENT: Mark Olson, Chair

I. CALL TO ORDER

Vice Chair Mr. McNamara began the meeting at 7:00 p.m. by introducing the Board members and leading the Pledge of Allegiance to the flag.

Mr. McMahon noted that the 48 Hobson Avenue application needed a continuance to January 15, 2014 meeting.

MOVED by Mr. Emerick to continue 48 Hobson Avenue to the January 15, 2014 meeting.
SECOND by Mr. McMahon.

VOTE: 7 – 0 – 0

MOTION PASSED.

II. ATTENDING TO BE HEARD

III. NEW PUBLIC HEARINGS

13-005 175, 165 & 155 Island Path

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

Applicant: Ezra Real Estate, LLC-Attention: Aaron Brown

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

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

Extension request for time frame to complete remediation work as required in the special permit approval.

Mr. Aaron Brown appeared. He stated he was granted a special permit and during the first year they were to do remediation work. He has started that work, but in April was issued a cease and desist order from the NHDES. This has prevented them from completing the remediation work this year. He requested that the time frame for doing remediation work be extended for the full special permit time limit. He added he is not asking to do any construction yet on the duplex but would like a reasonable time frame to complete the remediation.

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Mr. Loopley stated that the remediation work was to be done before construction of the duplex and noted that the time frame on the special permit approval ends on January 14, 2015. Mr. Loopley doesn't want to go that far out on the remediation work. Mr. Lessard asked if abutters were notified. Mr. Steffen confirmed that they were. Mr. Brown responded that if he doesn't receive a further cease and desist order from the State he thinks he could complete the remediation work by late spring/early summer - end of June. He added that there are a lot of wetland plantings that need to occur. Mr. Loopley stated that the end of August of 2014 would be agreeable to him.

Mr. Lessard asked about the cease and desist order. It is brought on by an abutter Mr. Belanger. Mr. Lessard stated he had read several emails regarding it. Mr. Loopley asked if an appeal had been filed. Mr. Brown responded "no". Mr. Loopley asked about the delay.

Mr. Lessard asked to what level the remediation work next to the abutter's property is completed. It was noted that the asphalt has been removed. Mr. Steffen read aloud what has been completed thus far. Mr. Brown stated that ninety percent (90%) of what is left of the work is on peninsula at 175 Island Path.

Ms. Woolsey discussed the mess that had been made to the area by the previous owner.

There was further discussion about the remediation work that was to be done within a year. Mr. McNamara noted that the cease and desist order was issued in April of 2013. Mr. McNamara asked about the discovery of hazardous waste material that was noted in one of the emails from Mr. Belanger. It was read aloud by Mr. McNamara. He asked what Mr. Brown saw on the field inspection. Mr. Brown responded that he observed crushed clam shells, rocks; there may have been some fill that he didn't look closely at. He stated that there appeared to be mistakes in the locations of the property lines. He explained the primary focus of that meeting was to see what they could do that would be palatable to the neighbor. He's stated he wasn't sure about the contents of the asphalt.

Ms. Woolsey commented that miscellaneous asphalt was buried there in an effort to expand the area. She asked if there's a concern about building more structures there. It was answered "no" – there will be nothing built on the peninsula. It was noted that the entire stone wall has not been removed yet - about 400' of wall has been removed.

Mr. Nathan Page, Acting Conservation Coordinator appeared. He showed a current picture of the area.

There was further discussion about continuing this application to a further date. Mr. McMahan stated that he wanted to know more about the cease and desist order.

Mr. Brown answered that they were issued on a cease and desist order on April 5, 2013. They were told to stop work due to the appeal filed by Mr. Belanger on the NHDES permit. He explained that until October 9, 2013 there was no ruling by the State - NHDES needed time to sift through the appeal. Mr. Adams of NHDES then denied the appeal. He further explained that the abutter has the right to appeal to the Wetlands Council which he did November 8, 2013. The appeal was incomplete and not accepted by Wetlands Council but they granted him another 30 days from November 14th to complete the appeal.

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Mr. Loopley stated he would like to give the applicants until August 30th, 2014 to complete the remediation work. He further stated if remediation is done prior to that they could start sooner on constructing the duplex.

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Mr. Lessard stated he agreed with Mr. Loopley. He noted that they are only dealing with remediation work. Mr. Brown stated that he believed the work could be done by August 30, 2014.

MOTION by Mr. Loopley to extend the completion time frame for the remediation work to September 15, 2014.

SECOND by Ms. Woolsey.

VOTE: 7 – 0 – 0

MOTION PASSED.

IV. CONTINUED PUBLIC HEARINGS

13-014 1042 Ocean Blvd. (continued from 4/3/13 & 11/6/13)

Map: 116 Lot: 12-1

Applicant: Mark & Janet Gacek

Owners of Record: Same

Amended Special Permit (As-Built): Re-development of lot, including existing structure, decking, patio and driveway. Re-development is more conforming, complying with 10-foot side yard setbacks. Proposed project proposes 1,200 square feet of permanent impact and 270 sq. ft of temporary construction impact for revetment of existing seawall.

Attorney Steve Roberts appeared from the Hoefle, Phoenix & Gormley law firm along with Mark Gacek, owner and Erik Weinreib from Altus Engineering. Atty. Roberts stated that the project was originally approved in May of 2013 for a revetment seawall. They have gone forward with the construction. He stated that they take responsibility for what was done but they are looking for an amendment to the special permit to right the wrong that has been done. He further stated that the sea wall as built differs from the plans that were approved because the builder had an inaccurate set of plans.

Attorney Roberts discussed the concerns from the Conservation Commission. He discussed curved stairs and explained the note on the construction plan that stated that the design of the steps was going to be left to the contractor. He discussed the benefit of utilizing the curved steps to reduce the property flooding as it better diffuses the wave action. He explained that plan set C-1 was approved but when the wall was being built with the curved steps instead they felt it was a better design. He asked that the Planning Board grant the

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amended permit. They will re-work the existing seawall and it would be in compliance with the prior plans.

Mr. Emerick asked for further clarification on the stairs. Atty. Roberts answered that there were straight stairs originally shown as a typical back in May but when the contractor built them he curved them. He said they would like to keep them that way.

Mr. Loopley asked where the 2' high walls are. Atty. Roberts answered that they are retaining walls. He stated there was a revised site plan that was approved by the Building Inspector, Kevin Schultz.

Mr. Weinreib of Altus Engineering appeared. He explained that the August 23rd revision was done at the request of Kevin Schultz, the Building Inspector in order to address site grade issues; not revetment issues. He discussed that the walls are along the southern and northern boundaries. This allows them to raise the grade between the house and 6 feet out. He explained that this allows them to construct a swale to direct the roof run-off out toward Ocean Blvd. and the ocean rather than allowing it to go north onto the abutting property.

Mr. Loopley stated if there was a storm surge they wouldn't be containing it. Ms. Woolsey asked about run-off going onto Ocean Boulevard. It was answered that they are not proposing to increase run off. It was noted that there was a drainage study completed. The previous development was right up to the property line.

Ms. Woolsey asked if the sea wall will be rocks rather than a revetment. She noted that a bond is required to protect the Town.

Duncan Mellor of Waterfront Engineers appeared. He stated that the proposal is to keep the curved stairs. He explained that the waves will run up the ramp if they are straight.

Mr. Lessard asked about the incorrect drawings and asked to see a copy of the original drawings. He asked for the date on those. He noted that the applicants got the wall they wanted; not the one the Town wanted. Mr. Lessard stated he did not believe it was an 'innocent' mistake. He commented that it does not make sense that no one knew of the changes. He wondered how something this awry and expensive went through. Mr. Mellor responded that the wall was not constructed as engineered. Mr. Gacek responded that he liked the idea of having the stairs turn but they are in the same footprint and same elevation.

Atty. Roberts stated that the owner does not wish to go through a correction. The fact the stairs are curved and not straight should not matter. Mr. Weinrieb stated that on the original plan set approved April 19, 2013, there is a note on C1 that stated that the existing concrete steps would be configured by the site contractor. Mr. McNamara responded that there appeared to be two issues with the steps - one they aren't straight as shown on the drawing or in the location shown on the drawing – they're off to the side.

Mr. Emerick stated that he was on the site walk with the Conservation Commission and he thinks the approach is masterful. He said he didn't agree with the Conservation Commission on the site walk. He understands Mr. Lessard's point. Mr. McNamara stated that the reason these projects come to the Planning Board is to agree on the way it's supposed to be done. He felt the situation needed to be rectified.

Atty. Roberts responded that it was done this way to protect the home.

Mr. McNamara discussed the extent of the changes.

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Mr. Loopley asked about the 2' high walls. The original approved plan noted "install a new fence" on both sides; not build stone walls. Atty. Roberts again stated that this was done at the request of the Building Inspector. Mr. Weinrieb explained that the April 9th application was done as a general site plan and through the process of working with the Mr. Schultz and the designer they added the retaining walls. He further explained that the building permit was issued but the retaining walls have not been constructed yet. Mr. Loopley reiterated that he was referring to the change on Sheet C1 of the plan that the Board originally saw which indicated a fence which is now 2' high stone walls.

It was again responded that Mr. Schultz made a strong recommendation for drainage purposes and the applicant adhered to that. Mr. Loopley discussed the change to the walls. He stated that one doesn't make that kind of error in construction. He further stated that the Selectmen have not seen what is going to be done on Town property and haven't approved it.

Mr. Gacek acknowledged it's on Town property but he has spent a lot of money on the wall.

Mr. McMahon stated that Mr. Gacek probably does not want a stairway on Town property that the public would have the right to access.

Mr. Loopley stated the footprint of the sea wall hadn't changed but the as-built is different from what was approved. No elevations changed. He feels that they need to go back to Selectmen and he stated he would propose a motion to say that the approval is contingent from Selectmen's comments. Ms. Woolsey asked why we are allowing stairs on any of these - they are an attractive nuisance; it's on public land. The owners want to access to the beach.

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Mr. Nathan Page, acting Conservation Coordinator, appeared. He discussed that the Conservation Commission saw the sea wall after construction and noted it not built as planned and approved. He noted that if the wall would fail the Town would be liable.

Atty. Roberts responded that Mr. Mellor's plan is stamped by him as a structural engineer.

Mr. Page stated that there is no railing shown at the top of the flat facing wall to provide for safety of people walking at the top of it. He also noted there was electrical conduit for lighting installed that wasn't shown on the original plan. Mr. Gacek responded that he would not go forward with that and would remove it. It will be removed was reiterated by Atty. Roberts.

Mr. Ciolfi stated that this may have been solved with a shop drawing and he questioned what the Board would like to see regarding major plan changes in the future. It was noted that they did an as-built.

Mr. Gacek defended his actions on the changes to the sea wall and the stairs and stated if he had known that he needed to come back to the Planning Board for approval for those before he did them he would have.

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MOTION by Mr. Loopley to approve the amended special permit (as-built) contingent upon approval by the Board of Selectmen of the sea wall on Town land. He stated he would like further discussion on the 2 foot high stone walls with the Building Inspector. There was discussion amongst the Board regarding the two approvals and the motions that needed to be made. The Board decided that the approval of the amended special permit for the as-built sea wall plan and the building inspector's recommendation for the retaining walls should be two separate motions.

MOTION by Mr. Loopley to approve as-built seawall contingent on Selectmen's comments and approval.

SECOND by Mr. Emerick.

Vote: 6 – 0 1 (Ciolfi)

MOTION PASSED.

The Board then discussed how to deal with the change to the plan for 2 foot high retaining wall without the Board being notified. The Board discussed the objections by an abutter to proposed retaining walls and how to address those concerns. It was noted that the Board has not approved the retaining walls. There was discussion about whether the Board would need to approve the change if it was a directive from the Building Inspector. Mr. Lessard stated that if the proposed walls are in the wetlands buffer they would need to get a special permit. There was continued discussion about changes to the approved plan and requested filed changes. The Board discussed sending a second letter that would go to the Board of Selectmen asking them to consult with the Building Inspector on a procedure for site plan adjustments after Planning Board approval. Mr. Steffen responded that this application was not a site plan approval it was special permit. He thought that the Building Department was within its authority to make changes relative to the building permit approval. Mr. Loopley stated that the amended as-built plan which includes that portion of the wall within the buffer needs to be addressed. Mr. Loopley further stated he would like to make a recommendation that the Planning Board send a letter to the abutter who is objecting to the retaining wall directing him to talk with selectmen and the building inspector with his concerns.

The construction of the house is in progress but the 2 foot high walls have not been built. Mr. Weinrieb indicated that it would be one of the last things done on the site. They are hoping to have approval for occupancy in April. Mr. Weinrieb again stated that Mr. Schultz requested the retaining walls, including permeable pavers which are to address the drainage concerns and are part of the building permit approval. He explained that without these the Building Inspector would not have any mechanism later on to say the drainage isn't working correctly. Mr. Loopley suggested that the abutter deal with the Building Inspector and the Selectmen with their concerns.

Mr. McNamara stated the seawall / revetment as-built are fine. The Planning Board has approved that. He further stated that the Board may need to consult with the Legal Department on how it handles the approval of retaining walls. Atty. Roberts if the Planning Board would inform the applicant the outcome of the consultation with the Building Inspector and others to see if they can move forward with the construction. It was responded "yes" by the Board.

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Mr. Lessard stated that the Planning Board needs to approve the amendment for the retaining wall if a portion of it is in the wetlands buffer.

Mr. Page asked about the design plans for the retaining walls and whether they would be in the 50' buffer which would require a special permit. He requested that the Conservation Commission in the future receive copies of any plan changes as the result of the Building Inspector's review.

The applicant noted that the wall could be a wet or dry wall. The purpose of it is to hold the soil back.

There was discussion amongst the Board about whether the retaining wall would need Selectmen's approval. It was noted that no portion of the proposed wall would be on Town property. Mr. Page noted that it would need a State Shoreland Protection Permit. He stated that the Conservation Commission would need to know what is going to be built so in the future if there are changes they will know what was supposed to be there.

Mr. Loopley summarized the issues with the plan changes and would like a letter to go to Mr. Shultz and to the Selectmen so that the Town could hash it out. Ms. Woolsey commented that there should be better coordination between the Building Inspector and Planning Board and the Conservation Commission.

12-033 48 Hobson Avenue (after the fact) – continued from October 2, 2013 & November 6, 201

Map: 289, Lot: 8

Applicant: Kelly Ford

Owner of Record: Same

Special Permit: Replace rear deck from 8 feet x 6 feet to 10 feet x 8 feet.

V. CONSIDERATION OF MINUTES of November 20, 2013

MOTION by Ms. Woolsey to accept the minutes of November 20, 2013.

SECOND by Mr. Lessard.

MOTION: 6 – 0 – 1 (Ciolfi)

MOTION PASSED.

VI. CORRESPONDENCE

VII. OTHER BUSINESS

Mr. McNamara asked for a vote on the Rockingham Planning Commission (RPC) representative. He read the names of the people who have submitted letters of interest for the position. They are: Barbara Kravitz, Shir Haberman and Fred Rice. He noted that if Ms. Kravitz is selected it would open up an alternate seat. Mr. Steffen noted that the Board of Selectmen does the actual appointment.

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The votes were tallied with Ms. Kravitz receiving the most votes.

MOTION by Mr. Lessard to recommend that Barbara Kravitz be appointed as a regular member.

SECOND by Mr. Loopley.

VOTE: 6 – 0 – 1 (McNamara)

MOTION PASSED.

Mr. Steffen noted that there would now be an open position for an alternate. Ms. Woolsey asked that the other applicants receive a letter of courtesy from the Planning Office and that there is the opportunity to be an alternate. Mr. Steffen is to note that by January 7, 2014, we would like to receive the letter of interest—deadline date.

Mr. Emerick noted that the January 9th FEMA presentation needed to be changed because he was told that new maps would not be ready.

Mr. Steffen discussed the next steps in the consideration of the proposed zoning articles. He noted that he had prepared the legal notice for the proposed amendments. He discussed the amendments aloud and noted that they were available for review at the Planning Office and the Library. The public hearings will be at the December 18, 2013 meeting. Mr. Steffen stated he will provide the proposals to the Board by December 11th.

Mr. McNamara read aloud the letter from the Town Manager regarding the proposed Zoning Ordinance amendment for Martial Arts Weapons for the Planning Board consideration for 2014 Town Meeting. The Board discussed that grandfathered businesses could do as they are doing but a new business would need to comply with these regulations. Mr. McMahan stated that he thought this would prevent any of these businesses from being allowed in Town.

MOTION by Mr. Emerick to move the Martial Arts Weapons proposal to a public hearing on January 15, 2014.

SECOND by Mr. Lessard.

VOTE: 7 – 0 – 0

MOTION PASSED.

Mr. Loopley asked about new seawall regulations and fees. He asked what brought this forward and who initiated it.

Mr. Emerick stated that the Town should abandon these properties. He asked why we need to be in control of them.

It was noted that the December meeting for the Conservation Commission will be on December 17th and the site walk will be the December 14th. Mr. Page provided information on the State's definition of gravel.

VIII. ADJOURNMENT

MOTION by Mr. Emerick to adjourn.

SECOND by Mr. Loopley.

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VOTE: 7 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 8:50 p.m.

Respectfully submitted,

Laurie Olivier, Administrative Assistant

****PLEASE NOTE****

ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.

MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING