

**HAMPTON PLANNING BOARD**

**MINUTES**

**September 17, 2014 – 7:00 p.m.**

**PRESENT:** Mark Olson, Chair  
Brendan McNamara, Vice Chair  
Fran McMahan, Clerk  
Tracy Emerick  
Rick Griffin, Selectmen Member  
Keith Lessard  
Steven Miller, Alternate  
Laurie Olivier, Planning Office Manager

**ABSENT:** Mark Loopley

**I. CALL TO ORDER**

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

Mr. McMahaon stated that 376 Winnacunnet Road has requested to be continued to the October 1, 2014 Planning Board meeting date.

**MOTION** by Mr. Emerick to continue 376 Winnacunnet to October 1, 2014.

**SECOND** by Mr. Lessard.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**II. ATTENDING TO BE HEARD**

**III. CORRESPONDENCE I**

Status of 377 Ocean Boulevard approval (continued from September 3, 2014)

Mr. Warren Kelly and Chief Chris Silver appeared. Mr. Olson discussed the hopefulness of meeting and making an agreement of some kind. Chief Silver discussed the September 10<sup>th</sup> letter from the Chairman. Chief Silver sent a letter on September 8<sup>th</sup> requesting additional information and noted that alternative options. Safety of the public was discussed. The September 8<sup>th</sup> letter detailed points for the basis of the Code review. He wanted to see other communities in which this situation occurred. Relocating the driveway to the side rather than driving under was discussed as an option.

Chief Silver received some information from Mr. Kelly. The Chief highlighted situations. Robert Cummings & Associates sent information (in file). Chief Silver cited Code references regarding the State Fire Code and he has his own interpretations. Mr. Cummings responded to Joe Coronati and Chief Silver.

Location of neighboring easements was discussed. Access to the property is Chief Silver's largest concern. Getting to the rear units is his concern. The location of easements does not provide adequate access to the property. Mr. Kelly said "permissible" not "acceptable" to

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the applicant was discussed—with reference to the Code. Other alternatives would be permissible, but would be a financial hardship according to Mr. Kelly. Chief Silver stated this appears to be the reason Mr. Kelly is not taking a different route. The Chief is concerned with life safety.

Chief Silver discussed residential sprinklers. Mr. Silver told Mr. Kelly that the Planning Board is prohibited in requiring this. It cannot appear as a condition of approval. It is not part of the site plan review. There is nothing to bind an applicant for sprinklers in the building.

Chief Silver said the World Trade Center was given as an example. Boston Fire has more resources than Hampton Fire Department.

Joe Coronati made a note that there were other drive thrus in Hampton. The most recent one, Chief Silver did also indicate his disapproval to. This (Kelly) arrangement is different. Access is required to provide a travel way to additional properties located to the rear. The applicant could not provide an example from any other communities. He believes those many officials have the same opinion as his.

The last project, 339 Ocean Blvd where a drive thru was approved by the Planning Board; the plans that were approved by the Planning Board, there was a certain width to the opening to the rear of the building. The applicant altered certain features which required a second review; and new plan was submitted. The applicant failed to state that the drive thru changed and was smaller and the Planning Board approved that new plan. During the PRC, Chief Silver was okay with other physical changes but wanted a review from the Fire Protection Engineer. That department did not verify that it was smaller. A contractor's vehicle protruded into the opening and was inadequate.

Chief Silver stated that his position has not changed. The applicant stated that if he knew of this months ago, he would have taken a different action. This project was presented for the Chief's review and discussed on June 25<sup>th</sup>. He read his comments (Chief Silver's) aloud. He quoted minutes from the PRC.

He then followed up with the Planning Board with his Memo citing his dissatisfaction. When the Planning Board approved it, there was nothing in writing that his position had changed. Chief Silver does not change his recommendations at this time.

Mr. Emerick asked about requiring sprinklers in single-family dwellings. It is a multi-family dwelling with stand-alone units. Chief Silver said they are not part of the building; they are considered individual, standard-family dwellings. It is something to consider. Chief Silver **would be satisfied with eliminating drive thru or provide an easement so during an emergency there is a maintained accessible travel way to the units.**

Mr. Kelly discussed clarity and interpretation. He said the Fire Chief stated “he cannot recommend” this project. They all interpreted it as not a recommendation, but not a flat “no”. He would have stopped his project if it were a “no”. He hired the Fire Safety Engineer – he found there were no laws against what he was doing.

He raised the height. He put fire hydrant in the rear. He changed hammerhead to meet adjacent lot. He said Fire can use easements to get in and out in a dire emergency. The front building is steel framed and sprinklered. He voluntarily sprinklered the back buildings.

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Mr. Kelly said financially this is one of the reasons he wants to do this project. He wants something beachy and quaint rather than a high-rise building. He discussed meeting with the Board. He went to work things out with the Conservation Commission.

At the second Planning Board meeting, the Conservation Commission was happy. He feels he's done everything he can do that the Planning Board wanted. He is asking Board what new information has been presented to the Board that they did not have. What justifies the position. He sees no new information.

Chief Silver read the July 24<sup>th</sup> letter to the public.

Mr. McNamara discussed the Chief giving Planning Board the tools, but the buck stops here. Unless prohibited by law. He thinks it's the ultimate decision of the Board, provided it does not conflict with the law. The Chief has authority to override for public safety. This decision could be voided if it affects public safety. Regarding the Planning Board approval, they act on what he has. Mr. Lessard asked about the better time to address items is now per Chief Silver. If this Board approves it, it could hit a wall down the road per Mr. Emerick. If the Planning Board says he's approved, it's okay to go forward. It's then up to the Building Inspector along with Fire to move forward.

The Chief said having Fire involved is to prevent this from happening in the future. 339 Ocean Boulevard has to be dealt as an after-the-fact for that error. Fire didn't catch it on the revised plan. The construction was already done to an approved plan.

Mr. McMahan discussed moving the driveway from one side to the other and to provide alternative access by the way of an easement. These have been discussed. Mr. Kelly said it's like starting from day #1. He said it is a shame. It's all new management, electric, driveways, etc.

Mr. Olson discussed overhead structures. Whether it be a 28' wide road but there can be a building on either side....he asked if it's the overhead component that is the problem. He asked where it's a road with no building overhead.

Chief Silver said it is a pinch point, but there are unique characteristics. One is the fact that it does have some overhead. Parking on either side is another factor. Should the building be damaged, then all access is eliminated to the rear. You can't drive around an obstruction.

Mr. Emerick said it's a moot point. Two months from now when Fire Prevention comes in and says "no" Mr. Kelly will spend more money.

Mr. McNamara said it may give him more time to work out another plan. Mr. McNamara stated vacating any findings or approvals sets a bad thing to do. Ms. Olivier stated that also the conditions of approval (in the letter after the PB meeting where it was approved) were not a part of the vote of the Planning Board members. There were no conditions voted on as they were not prepared at the time. They need to be incorporated into the decision.

Mr. Kelly may make a financial decision and time decision, start over and make it work and figure out what it will look like.

Ms. Olivier discussed to the Board the PRC process and the comments made from Chief Silver at the PRC. She stated she thought that's why we do a PRC. If Chief Silver was not happy with the Fire conditions at the meeting, why would an applicant, surveyor, developer

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move forward and disregard. She likes the looks of the project as does everyone, but it appears Chief Silver's comments were ignored. Mr. Kelly said he went according to his counsel and developers in preparing the mylar/paperwork as it is after the PRC meeting.

Attorney Gearreald appeared. He said it is not his recommendation for the Board to approve. The Chief has said “no”. It was represented at the August 20<sup>th</sup> meeting. Attorney Gearreald believes the Board needs to make the corrections now. Mr. Griffin would expect it to go to Court.

Mr. Emerick said he thought it was great as designed but is up

**MOTION** by Mr. Emerick to vacate the Planning Board’s approval of August 20th.

**SECOND** by Mr. McMahan.

Mr. Olson does not disagree. He noted it is a nice project. The Planning Board took it as a recommendation. These recommendations need to be addressed. He feels that maybe the Board lost sight of it trying to get it to move forward. Vacating means it is not approved. Mr. Kelly would have to start design, notice, etc., all over again. Zoning variances would continue. The building would have to be taller, so that would need to be addressed with Zoning.

**VOTE: 3 – 1 (McNamara) – 3 (Lessard, Miller, Griffin) MOTION PASSED.**

If we do it in a month or two months – sacrificing square footage was discussed by Mr. Olson. Making the building taller in the front was mentioned.

Mr. Kelly does not want to go against Fire Department. He will move on. He can put smaller buildings in the front. Mr. Kelly said if numbers don't work, the project doesn't work.

Mr. Kelly said the plan is a beautiful plan and the Board all agreed.

**IV. CONTINUED PUBLIC HEARINGS**

**14-034 376 Winnacunnet Road (continued from 9/3/14) \*\*see above-cont'd to 10/1/14**

Map: 207 Lot: 9

Applicant: Susan Scott

Owner of Record: Same

10-lot subdivision & Special Permit to impact wetlands: Subdivision to tie into existing manhole located in the buffer.

**V. NEW PUBLIC HEARINGS**

**V. CONSIDERATION OF MINUTES of August 20, 2014 and September 3, 2014.**

**MOTION** by Mr. Emerick to accept the August 20, 2014 Minutes.

**SECOND** by Mr. Lessard.

**VOTE: 5 – 0 – 2 (Miller and Griffin) MOTION PASSED.**

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**MOTION** by Mr. Emerick to accept the September 3<sup>rd</sup> Minutes.

**SECOND** by Mr. Lessard.

**VOTE: 5 – 0 – 2 (Miller and Griffin)**

**MOTION PASSED.**

**VI. CORRESPONDENCE II**

- Decision Letter: 339 & 345 Ocean Boulevard (incorporation of Decision letter conditions to approvals granted on August 20, 2014)

Mr. Lessard he is saddened. The Town Manager left the office and now we are left with two major fumbles. Mr. McNamara agrees. Mr. McNamara does not want to vacate decisions. Mr. Olson said he is upset the rough opening isn't built as we approved it. Mr. Olson asked if we've been duped. We don't have a Planner, builders know this and it appears those involved want to see what one can shove through the Planning Office. Mr. Olson can't catch everything. He is disappointed with management and Mr. Lessard is disappointed.

Mr. Emerick said on 339-345 it is out of the ground. Mr. Lessard asked how the plan was changed. They changed the unit count. That was interior modifications. CMA could be asked why the opening is off. Interior partitions did not need to be looked at differently. The Plan was not represented as changed. This project is done. The Board will be more careful on some future developments with future developers.

**VII. OTHER BUSINESS**

- 311 Winnacunnet Road – Special Permit Extension (continued from 9/3/14)  
They are looking for a three-year extension.

**MOTION** by Mr. Lessard to extend the permit for three years; ending **August 11, 2017**.

**SECOND** by Mr. Emerick, along with conditions from the Conservation Commission dated August 29, 2014.

**VOTE: 6 – 1 (McNamara) – 0**

**MOTION PASSED.**

- 372 Exeter Road – Special Permit Extension (continued from 9/3/14)

**MOTION** by Mr. Emerick to grant the two-year extension, to expire on **October 17, 2016**.

**SECOND** by Mr. Griffin.

**VOTE: 6 – 0 – 1 (Lessard).**

**MOTION PASSED.**

- 24 Tuttle Road – Special Permit Extension (continued from 9/3/14)

**MOTION** by Mr. Emerick to grant the extension, to expire on September 5, 2016.

**SECOND** by Mr. McMahan.

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**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**Mr. Lessard would like a letter from Conservation when extensions are being requested**

Ms. Olivier discussed how to deal with the Island Path (175, 165, 155). Ms. Olivier stated the owners are not slacking off; outside conditions are making it hard to complete. Their extension expired on September 15th (this week).

The Board asked for Rayann in Conservation to do a recommendation for the Planning Board for the next meeting and they will vote on it then.

Mr. Olson discussed the beach community. He wonders if we are really managing the situation. Traditional New England retail was discussed. He handed out pictures showing what he wants to see as the spirit of design. He thinks the picture he has should go to the Beach Commission. He wants this in our Town as well as at the beach. It is a York Beach, Maine area/handout that was given.

**VIII. ADJOURNMENT**

**MOTION** by Mr. Emerick to adjourn.

**SECOND** by Mr. McNamara.

**VOTE: 6 – 0 – 0 (Mr. Griffin left a bit early)**

**MOTION PASSED.**

MEETING ADJOURNED: 8:10 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**