

**MINUTES  
HAMPTON ZONING BOARD OF ADJUSTMENT  
THURSDAY, JANUARY 27, 2005**

MEMBERS PRESENT: Michael Kennedy, Chairman  
Matt Shaw, Vice Chairman  
Rick Griffin  
Vic Lessard  
Jennifer Truesdale, Clerk

OTHERS PRESENT: Kevin Schultz, Building Inspector  
Angela Boucher, Recording Secretary

The Chairman called the meeting to order at 7:06 p.m. and announced that this is a continuation from last week. There's no guarantee we'll get to the end of the agenda. Anyone we don't get to, will be on next month's agenda. He then asked Mr. Lessard to lead the Pledge of Allegiance. After the Pledge of Allegiance he asked everyone, in the essence of time, to try to keep their comments to the petitions.

104-04 The petition of Tom Pennace, for property located at 72 Plymouth Street, seeking relief from Article 4 (as to 4.5.2) to enclose existing second floor porch and expand and enclose third floor porch. This property is located at Map 305, Lot 17 in a RA Zone.

Mr. Dan Kiley, General Contractor, and Mr. Tom Pennace came to the table to speak on the petition. Mr. Kiley explained that they would like to close in an area above an existing porch on the left side of the building. In one area there's an 8 foot setback and in another area 9 feet. They will be adding a bedroom on the third floor and expanding living area on the second floor.

Mr. Kennedy asked if he was expanding the footprint? Mr. Kiley answered no.

Mr. Kiley then read through the 5 criteria as presented with the petition. The house was completely rebuilt four or five years ago.

*Questions from the Board: None.*

*Comments from the Audience: None.*

Hearing no comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board:*

Mr. Lessard said he recalls a prior petition stating there shall be no further protrusion into the setbacks. That would include the drip edge.

Mr. Griffin MOVED to allow the petition, subject to the stipulation that the footprint and the setback does not change, SECONDED by Mr. Lessard.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

105-04 The petition of David F and Margaret A Connors, for property located at 31 Beach Plum Way, seeking relief from Article 4.5.1 to raze, remove and replace a house that has a 2.5 foot front setback with a

new house, having a 7.5 foot front setback where 20 feet are required. This property is located at Map 134, Lot 55 in a RA Zone.

Atty. Bob Casassa and Margaret & David Connors came to the table to speak on the petition. Mr. Casassa said they are here this evening for one variance. That is from 4.5.1, a variance from the front setback. The lot has 50 feet on Shaw Street and 49.5 feet across the rear, where the others are more narrow. The Connors would like to take down the existing building and build a new year round home. They cannot inhabit the existing building. The other setbacks will be improved. The right setback is now 2.5 feet on Beach Plum Way. It will be 7 feet. The difficulty is the narrowness of the lot. With 30 feet of setbacks, that leaves 20 feet for a building envelope. The area has had substantial improvements in the recent years. The new construction will become more conforming. The front setback will improve from 2.5 feet to 7.5 feet. At present the access is on Beach Plum Way. This will change to Shaw Street which is a more wide street. He noted there are supporting letters from abutters at 54, 47 and 48 Ancient Highway and 56, 58 and 59 Beach Plum Way in the file. Also in the file is a letter from a realtor stating this will not diminish the value of the surrounding properties. He referenced the submitted sketches showing an 8 foot setback at the rear where there exists a 4.5 foot setback. The proposal is more in line with the requirements, he said.

*Questions from the Board:*

Mr. Kennedy asked if this will be a 3 bedroom home. Mr. Casassa responded yes.

Mr. Lessard reported that 4 bedrooms are allowed. He asked if this is the same plan that was submitted previously. Mr. Connors said no.

*Comments from the Audience: None.*

Hearing no comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board: None.*

Mr. Kennedy reported that there are 6 letters from abutters in the file, in support of the petition.

Mr. Lessard said he feels this new home will be an improvement to the neighborhood and good for the Town. He wishes it was approved years ago.

Mr. Griffin MOVED to grant the petition, SECONDED by Mr. Lessard

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

106-04 The petition of George Hurley, for property located at 20-34 Brown Avenue, seeking relief from Article 1.3 and Article 8.2.3 to replace the existing entry stairs, due to disrepair and aging, and reconstruct the stairs, meeting Building and Life Safety Code requirements. This property is located at Map 274, Lot 151 in a BS Zone.

Mr. George Hurley, representing Sunset View Condo Association, said he needs to build a set of stairs to code that replace a set of stairs that are 27 inches wide at the top and 31 inches wide at the bottom. He also proposes to move the set of stairs outside of the existing deck and make them 42 inches wide. Presently the stairs are built into the rectangular perimeter of the deck.

*Questions from the Board:*

Mr. Lessard asked if this construction will be on the older building. Mr. Hurley responded yes.

Mr. Hurley then read thru the 5 criteria as submitted with the petition.

Mr. Lessard asked if this was the only set of stairs? Mr. Hurley replied yes.

Mr. Schultz advised that this will meet the means of egress requirement.

*Comments from the Audience: None.*

Hearing no comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board:*

Mr. Lessard feels there's no doubt this will be better.

Ms. Truesdale MOVED to grant the petition, SECONDED by Mr. Griffin.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

At this time Mr. Shaw leaves the Board and Mr. William O'Brien, Alternate, sits on the Board.

107-04 The petition of Florence Lundeen, for property located at 28 Fuller Acres, seeking relief from Article 1.3 and Article 8.2.3 to enlarge a partially existing dwelling unit over an existing deck, replace a portion of that unit that was demolished, and replace an existing second floor balcony. This property is located at map 265, Lot 54 in a BS Zone.

Atty. Peter Saari and Ms. Lundeen came to the table to speak on the petition. Mr. Saari reported that this is an existing apartment building in the BS Zone. The owner proposes to remodel a single unit and expand the living area out to the existing deck. It's a very small 1 bedroom unit consisting of 400 square feet. She would like to enlarge the unit, adding 162 square feet more living area. When the demolition was started to put a new, poured foundation under the building, a lot of insect damage and rot was encountered. Presently there is a block and pier foundation. Even though the building is on the same footprint, it is within the 40 foot setback. The entire lot is within the setback. The submitted plans show side and rear elevations. The heavier line shows the new work. There will be no more bedrooms, and no additional units. He then read through the 5 criteria as submitted with the petition. He also distributed a picture of Mrs. Lundeen's exterior decorations at the location.

*Questions from the Board: None.*

*Comments from the Audience: None.*

Hearing no comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board:*

Mr. Lessard feels that this is for the better and it will increase the surrounding property values.

Mr. Lessard MOVED to allow the petition, SECONDED by Mr. O'Brien.

Mr. O'Brien asked about a letter in the file. It's not against the petition but asks for supervision. Ms. Lundeen explained that a backhoe had been digging between his building and hers and he's concerned about the stability of his building. She has asked the contractor to hand dig in that area and she will be supplying the abutter a new fence.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

108-04 The petition of JST Properties, LLC, for property located at 139 Ocean Boulevard, seeking relief from Article 1.3 and Article 4.5.2 to extend the two side sections of the existing second floor deck to be in line with the front section, where the deck will not meet the side setback requirement. This property is located at Map 287, Lot 42 in a BS Zone.

Atty. Peter Saari and Jim Trainor, owner, came to the table to speak on the petition. Mr. Saari explained that this property is at the top of F Street, just south of the Casino. Existing and proposed pictures have been submitted to the Board. The change entails enlarging the second story deck in the front of the building that is supported by columns. Not making it any deeper, but expanding to the north and south to the length of building. There is a 17 foot setback at the front. A 3.1 foot setback on the south and 2.4 feet setback on the north exists with the existing structure. The second floor will be converted to a dining area and he plans to put tables on the sidewalk underneath the deck. He plans to get rid of the motel rooms and have something like the Sea Ketch. He plans to refurbish the entire inside and make this an attractive place to eat. The building is 85 years old.

*Questions from the Board:*

Mr. O'Brien asked if the front setback will be at least 4 feet. Mr. Trainor agreed. Mr. Saari said the setback is 10.3 across the entire front.

Mr. Saari then read through the 5 criteria as submitted with the petition.

*Comments from the Audience: None.*

Hearing no comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board:*

Mr. Lessard commended Mr. Trainor for improving this building. He was raised at the beach and these places were kept up in those days. He likes to see the pillars and would like to see people eating out front instead of t-shirt factories.

Mr. Lessard MOVED to grant the petition, SECONDED by Mr. O'Brien.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

The Board took a 5 minutes break at 7:55 p.m.

109-04 The petition of Three LG, LLC, for property located at 143 Winnacunnet Road, seeking relief from Articles 1.3, 3.22 and 6.3 to construct a 793 square foot two-story addition to existing office use, together with associated parking, and to allow 5 parking spaces within the town-owned right of way to meet the requirements of 21 parking spaces. This property is located at Map 176, Lot 24 in a RA Zone.

Atty. Michael Donahue and Scott Bean, one of the principles of Three G, LLC, came to the table to speak on the petition. Mr. Donahue explained that they were before this Board in March of 2004 seeking consent to convert one unit from residential to office use. At that time they indicated plans to convert the rest of the units, as they vacated, from residential to office use. We subsequently came back in September 2004, with an existing office use in the Barn in the rear, asking to expand the barn for more office use. While keeping the remainder of the units residential. There were comments from one abutter that was concerned with the parking layout and its affects on her home. We withdrew the petition and are back with a more complete application. He presented a packet to the Board containing pictures and a survey plan. He explained his packet showing pictures of the building from different directions. The structure to be converted, including an addition of 800 square feet times 2 floors is on the east side; away from this abutter. There will be 5 parallel, overflow parking spaces on Winnacunnet Road, with the majority along the east side of the property near the Cullen property. He has revised the parking layout near the Cullen property to only include 3 spots 15 feet away from their property and a driveway next to that and then nine spaces on the other side of that, up next to the house, and

four spaces on the west side of the building. This meets the 21 spaces required. We will relinquish any aspects of the first variance so that to convert any other units, we would have to come back to this Board. 1 unit is occupied by Mrs. Bean and 2-1 bedroom units exist. Those will remain the same. The Bean Insurance Agency has 5 employees. The insurance business does not have a high rate of office visits. A lot is done by the phone or internet. The reason we need the variance is because 5 are in the right of way. We attempted to have a discussion with Mrs. Cullen, telling her we would move the driveway and most of the spaces away from her property. Allowing a 15 foot setback and providing any reasonable screening. Mr. Bean went to the Conservation Commission and they requested that we stay out of the 50 foot wetlands buffer.

Mr. Bean explained that this back yard used to be a cow pasture. The Town has used that land to drain water from surrounding areas. It used to be dry. There was a Town swimming pool where Wheaton Lane Terrace has now been built up and filled in.

Mr. Lessard added that this is manmade wetlands. There is a 24' pipe through there.

Mr. Donahue explained the nature of the neighborhood being largely institutional and office. Historically this property has been mixed-use, residence and office. Only 20% of the property is proposed to be office. We've tried to be respectful to the rights of others. There is a substantial grade change where the parking area will be. We have 5 letters of support in the file, with the abutter on the other side being one of them. He then read through the 5 criteria as submitted with the petition.

*Questions from the Board:*

Mr. O'Brien said he's concerned with the elevations showing the addition to the east when it's supposed to be on the west. There is a bike path on the Town Warrant. Would these parking spaces in the right-of-way interfere with that.

Mr. Griffin confirmed that the bike path will go down Winnacunnet Road.

Mr. Lessard said it would go in front of the parking spaces just like at Steve Ells property and the bank.

Mr. Donohue explained that the right of way is 75 feet wide and people do park in front of their properties now.

Ms. Truesdale read a letter in the file from the owners of 157 Winnacunnet Road, opposing the petition.

*Comments from the Audience:*

Deborah Cullen, representing the Cullen family, said this property has been primarily residential and they want to change it into a significant commercial property. Her family purchased in 1962. Their house is the same length and elevation as the Bean property. Their lot is also the same length. Three out of 4 of her bedrooms will look out on that parking area. Two large windows on the first floor look out onto this property also. The kitchen was redesigned about 5 years ago to allow more light and a view. The deck on the back of our house is our quiet space. There will be car alarms, music, outdoor lighting, plows and lights at night. Looking down at eye level from our deck we can see the whole parking lot. There will be car exhaust fumes. Everything drifts west to east. The windows are open all summer.

Discussion followed on the trenches on either side of the Bean property and the lights. Mr. Bean said they won't be open at night and won't shine the lights toward her property. Mr. Donahue offered to present the lighting plans to the Cullen's lawyer. The only parking near their property will be up near Winnacunnet Road. The rest will stay the way it is.

A 5 minute break was taken at 9:15 p.m.

Atty. Craig Solomon, representing Mrs. Lorraine Cullen, said Deborah spoke about the impact on their quality of life by this variance. This is the RA Zone. This property is currently used for multi-family which is already prohibited. They currently have office space that they wish to expand. This is a non-conforming use. He feels they also need relief for a parking lot. Most of these institutional and commercial uses are west of the Fire Station. The dentist is there, but it looks like a home. The parking is outback. The "beehive" is residential too. Up at the other end and Bill's Motor Court, the courts decided that just because it's on the edge of a neighborhood doesn't excuse them to move the neighborhood further. The expansion and more parking

changes the character of the property. In 2004 when you approved the LaBarre property, you stipulated that they preserve the residential character of the property. He submitted photos taken from the Cullen living room and deck and the view towards the Wallingford property. This does not meet the 5 criteria, he said. Where is the neighborhood line? At the Fire Station or somewhere else? He submitted a letter from Michael Daignault, Appraiser, who characterizes the neighborhood from the Fire Station east. This would result in a diminution of value, he said. This is contrary to public interest. The traffic pattern will be a disaster waiting to happen. People will be making u-turns to parallel park. This is directly across from the red light in front of the Fire Station. Someone pulling out of the new driveway can't even see that light. Those 5 spaces are not on sight and are not under perpetual easement. This property is not unique. The wetlands are all along the rear of the lots on Winnacunnet Road. Is the use reasonable? No, it's out of character with the neighborhood. 21 parking spaces is a function of the use. It's not reasonable. RA Zone preserves single family. This will effect property values and the quality of life. The spirit and intent of the ordinance is to discourage expansion of non-conforming uses. Parking lots are not allowed in the RA Zone.

Marilyn Wallingford, 151 Winnacunnet Road, said the character of the neighborhood is residential. East of the Fire Station and the Congregational Church is lovely, old homes. Henry Stonie spoke of preserving the neighborhood when the LaBarre petition was approved. This is too commercial because of the parking and the lighting. She has a picket fence, extensive gardens and window boxes. She's gone overboard to preserve the residential look of her home.

Hearing no further comments from the audience, the Chairman called the public portion of the petition closed.

*Comments from the Board:*

Atty. Donahue said they are offering to relinquish because in March they were approved to convert the entire property to office space. The reason we have to come back here is for the addition and to relinquish the previous approval and for the parking. We moved the parking into the street to reduce the parking near the Cullen's property. He said evergreens could be planted as a screening. We responded to their concerns. They've attempted to define the neighborhood the way then want to. He feels the neighborhood extends to Mill Road. The Wallingfords have a parking lot. So does the Church and the bank. There's an enormous parking lot behind the Fire Station. He's never seen Mr. Daignault write an opinion without comparables and numbers. He's written a zoning opinion, not a value opinion. We did seek consent of the Conservation Commission to go into the buffer at the rear and we were told "no way".

Atty. Sullivan added that this property should also meet the 40 foot buffer. The 3 parking spaces and half of the driveway is in the 40 foot buffer. There's no variance requested for that.

Mr. Donahue said the multi-family use is pre-existing, the 40 foot buffer is grandfathered. We could turn the entire building into office space; which the Cullens supported. We could have this parking right up to their property. This is a small office with 5 employees. The Wallingford property has more customers and more impact on the neighborhood than this use.

Mr. Lessard commented that he's been with the same insurance for 40 years and has never been into the office.

Mr. Griffin said the same for 30 years.

Ms. Truesdale said she sells insurance and doesn't meet a lot of her customers.

Mr. Lessard said he can't locate the parking to the other side because there's no room. Mr. Bean agreed.

Mr. Kennedy asked why they can't remodel the old house. Mr. Bean said he needs open space and the old house has small rooms and many partitions.

Mr. Griffin added that the Bean's have always taken care of their property. If there's any noise out in the parking lot, she'll be right out there taking care of it, he said.

Mr. Lessard said the Planning Board will protect the neighbors as far as the lighting. The other variance is more detrimental than this.

Mr. Donahue said the parking went down from 23 to 21 spaces by keeping the residential. The addition is way in back and screened from any residential.

Mr. Griffin MOVED to allow the petition with the stipulation that they relinquish the other variance from March of 2004, correct the building plans to show the addition on the west side and submit lighting plans to the neighbor's attorney and the hours of operation shall be 9-5, SECONDED by Mr. Lessard.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

110-04 The petition of Stephen Blyth, for property located at 34 Barbour Road, seeking relief from Articles 2.5.4A and 4.1, to create a new lot in area by making a lot line adjustment. This new lot area will increase by 4,000 square feet but not meet the minimum lot size required in an RA Zone or in the Aquifer Protection Area. This property is located at Map 140, Lot 14 in a RA Zone.

111-04 The petition of Stephen Blyth, for property located at 39 Milbern Avenue, seeking relief from Article 2.5.4A, to create a new lot by adjusting the North side property line. The new lot size and area does not meet the minimum lot size in an Aquifer Protection Area. This property is located at Map 110, Lot 17 in an RA Zone.

Mr. Stephen Blyth came to the table to speak on the petition. He submitted a letter to the Board from Mrs. Buttrick allowing him to speak for her. He said he has a Purchase and Sale for 34 Barbour Road with the requirement that he receive the extra 4000 square feet from her other lot. His lot will be going from 10,000 square feet to 14,000 and hers will be going down to 18,000.

Mr. Schultz reported that this is an original lot of record, but it didn't have the required square footage.

Mr. Blyth read through the 5 criteria as submitted with his petition.

*Questions from the Board: None.*

*Comments from the Audience: None.*

*Back to the Board:*

Mr. Griffin MOVED to grant both the petitions, SECONDED by Mr. O'Brien.

The Chairman polled the Board on their satisfaction that the 5 criteria required for granting a variance are being met and the Board members unanimously agreed that they were satisfied with the petitioner's response.

VOTE: 5 FOR UNANIMOUS

PETITION GRANTED.

Mr. Schultz advised Mr. Blyth that his next step is to go to the Planning Board.

The meeting was adjourned at 10:25p.m.

Respectfully submitted,

Angela Boucher,  
Recording Secretary