

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 20, 2005**

MEMBERS PRESENT: Robert V. Lessard, Chairman
 Tom McGuirk
 Jennifer Truesdale
 Bill O'Brien
 Matt Shaw

OTHERS PRESENT: Shirley Doheny, Recording Secretary

Vic Lessard announced that Glyn Eastman was in the hospital. Mr. Lessard led the Pledge of the Allegiance.

62-05 The petition of Terence & Jennifer Kimball for property located at 4 Pine Road seeking relief from Articles 1.3, 2.5.4.B, 4.5.1, 4.5.2 and 4.8a to add a second story over garage which is in the side setback and a farmer's porch on the front which will be in the front setback. This property is located at Map 166, Lot 28 in a RB zone.

Terence Kimball came forward with Architect Rich Correll. The petitioner is looking to put a second story master bedroom over an existing non-conforming attached garage. Lot is presently non-conforming. He went through the five criteria as submitted in the petition.

Questions from the Board

None

Comments from the audience

None

Back to Board

Bill O'Brien asked if there are stairs off the farmer's porch. Mr. Correll answered yes. Mr. Lessard polled the Board regarding the five criteria. Bill O'Brien motioned to allow the front setback to go to 14.9 in order to include the drip edge and the stair. Matt Shaw seconded.

Vote: 5-0

Petition Granted

63-05 The petition of Paul & Kathy Perkins for property located at 470 Winnacunnet Road, Unit 2 seeking relief from Articles 1.3, 8.2.3 and 8.2.6 to raze and remove existing cottage and replace with new 2 story cottage within the same footprint. This property is located at Map 222, Lot 59 in a RB zone.

Paul and Kathy Perkins came forward. They are looking to replace an existing cottage. They have permission from the Condominium Association. Paul went through the five criteria as stated in the petition.

Questions from the Board

Matt Shaw asked if it was so bad that it had to be taken down. Paul stated yes.

Comments from the audience

None

Back to Board

Bill O'Brien referenced a site plan dated 10/01. He asked if they would be staying within the same footprint. They are enclosing a deck as a three season porch. The Board addressed the issue of heating the three season porch. Petitioner stated that he got an ok from the Association. Board agreed that no permission is given for heat in the porch. Matt Shaw stated it would be one big room not a porch. Jennifer agreed that it would be one room. Bill O'Brien asked about RB zone setback to rear. Vic Lessard stated that they had already been given relief for that. The petitioner presented plans that show a three season porch not a kitchen. Jennifer motioned to allow them to withdraw to present plans showing one room. It is suggested that they check to see if they need relief from setbacks and that they bring plans that show what they will build. Tom McGuirk seconded Petitioner will withdraw.

Vote: 5-0 Motion granted for Petitioner to Withdraw

64-05 The petition of Robert & Susan Jamieson for property located at 35 Thornton Street seeking relief from Articles 1.3, 4.1, 4.1.1, 4.3, 4.3, 4.5.1 and 4.5.2 to expand existing second floor plan by adding full height exterior walls, add third story/attic with new roof and add front entrance stair structure. This property is located at Map 304, Lot 2 in a RA zone.

Mr. O'Brien stated that 4.3 is listed twice and 4.2 is not listed on the agenda. The question arose as to how it was advertised. It was advertised in the Hampton Union the same as the agenda. Rich Correll came forward Bill O'Brien asked about how many stories and suggested that they may want to request relief from 4.4. He did speak with Kevin regarding 4.4 and will check again. Jennifer Truesdale motioned to allow withdrawal. Matt Shaw seconded

Vote: 5-0 Motion granted for Petitioner to Withdraw

65-05 The petition of Mike O'Neil for property located at 79 Church Street seeking relief from Article 4.5.2 outbuilding requires set back variance due to lot size. This property is located at Map 274, Lot 44 in a RCS zone.

Mr. O'Neil came forward. Shed is too close to property line. He took down an existing shed and replaced it with a new shed. The tax map doesn't show an existing shed. Mr. O'Neil went through the five criteria as presented in petition.

Questions from the Board

None

Comments from the audience

None

Back to Board

Mr. Lessard polled the Board regarding the five criteria. Jennifer Truesdale motioned to approve; Tom McGuirk seconded

Vote: 5-0 Petition Granted

66-05 The petition of George Snow, thru David Snow, for property located at 34 Mill Pond Road seeking relief from Article 4.2 to construct a single family dwelling on a newly created lot having frontage on Glen Road which will satisfy all of the zoning requirements except frontage. This property is located at Map 150, Lot 2 in a RB/RA zone.

Peter Saari came forward with Mr. Snow. They have included a turn around to avoid backing out onto Glen Road. It is better frontage than most lots in the area. This is a unique lot. It is a larger lot with little frontage. Atty. Saari went through the five criteria as stated in the petition. This is an area variance. The only other frontage available is with other lot.

Questions from the Board

None

Comments from the audience

Mr. Radkay of 72 North Shore Road came forward in favor of this petition.

Carlene Dillon came forward. She was in opposition before. She is concerned that it is still a RB lot. If it is accepted as proposed does it restrict the lifting of the 13 foot frontage to allow one single home? She doesn't agree that other lots are much smaller. She was informed by Mr. Snow that if there is ledge, they would not blast without a survey of the area. Vic Lessard says Mr. Snow would probably be told to use a hammer. The other major concern is the run off. She would hope that the land could be addressed so that there would be no further run off.

Back to Board

Peter stated that there is a requirement of the town that you cannot have more run off after construction than before. Bill O'Brien is not pleased with the frontage, but the neighbors did not want a road which would have given enough frontage. The Board agreed with the five criteria. Matt Shaw motioned to approve. Jennifer Truesdale seconded.

Vote: 5-0

Petition Granted

67-05 The petition of Robert & Elaine Palmieri for property located at 84 Mace Road seeking relief from Articles 1.3, 4.1, 4.1.1, 4.2, 4.3 and 4.5.2 to replace second floor and add a front porch to existing single family. This property is located at Map 163, Lot 5 in a RA zone.

Bob and Elaine came forward and presented the five criteria as presented in petition. Architect Rich Correll came forward. Mr. Palmieri went through the five criteria as submitted in the petition. There will be 20 feet from front. Vic Lessard asked if the steps were within the setbacks. Mr. O'Brien asked how many stairs. Mr. Correll stated three rises and one tread.

Questions from the Board

None

Comments from the audience

Rob Hunt of 82 Mace Road came forward. He is not in favor of a structure within five feet of his property line. Side may come into 6 feet. They are trying to stay straight with the house. Mr. Hunt stated the corner of the house is now 8' 6" presently. Vic Lessard asked why they couldn't go in little bit. Mr. Palmieri stated they wanted it to make it look like a conventional house. Mr. Hunt said the houses are already very close together.

Bob Brown of 88 Mace Road came forward. He has no problem with plan.

Back to Board

Matt Shaw stated that the overhang is a problem. Elaine Palmieri stated that by doing it this way it would give them added room. Matt Shaw stated the he understood the concerns of Mr. Hunt and wasn't sure if it would effect the value of his property. Mrs. Palmieri stated that she thought the addition and repairs being made would increase the value of surrounding homes. Bill O'Brien asked about the plan. He understood that the second floor is coming out two feet. Mr. O'Brien asked about the porch with a specification of a certain amount of feet. Mr. Correll stated that he would meet the 6 feet setback from property line instead of 5. Tom McGuirk doesn't think it will diminish the property value but he does recognize the privacy issue. Mr. Correll stated that from the house to house is forty feet. Vic Lessard asked if it would help with a fence or shrubs. There is a stonewall so they would have to put the fence on their side. Elaine Palmieri stated that they were trying to avoid building off the back. Vic Lessard thinks that it would raise the value not diminish. He thinks that something could be worked out to provide some privacy. Matt Shaw doesn't think it will affect the value. He thinks it needs the overhang. Bill O'Brien is willing to approve with the stipulation that the side setbacks come no closer than six feet. Jennifer Truesdale agrees with Bill O'Brien. She thinks 6 feet seems reasonable, they are already 8'6". Tom McGuirk thinks if setback is 6 feet and shrubs are added for privacy it would be ok. Vic Lessard asked what they are willing to do. Elaine Palmieri would like to put up a fence and arborvitaes to give some privacy. Vic Lessard polled the Board regarding the criteria. Jennifer Truesdale motioned to grant with no less than 6 foot setback on that side. Bill O'Brien wanted to clarify that the twenty feet in front includes all stairs and drip edge in front. Bill O'Brien seconded.

Vote: 5-0

Petition granted

68-05 The petition of Loretta Cavagnaro for property located at 99 Ashworth Avenue seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to add a third floor addition to house. This property is located at Map 290, Lot 74 in a BS zone.

Atty. Tim Kelley came forward representing the owners. The current side and front setbacks are nonconforming. They want to add a third story. The variance is requested to allow using the existing footprint. Atty. Kelley referenced a plan showing that there are two encroachments. One has been taken down. The smaller will stay. Petitioner showed picture that it had been taken down. Atty. Kelley went through the criteria as submitted in the petition.

Questions from the Board

Bill O'Brien asked if the existing foundation can support the third floor. If they find that the foundation needs to be replaced, would it be reasonable to move it over 2 feet. Bill O'Brien stated that the plot plans should show chimney and stairs. He noted that the plot plans they have been getting have not been complete. Mr. O'Brien asked why would they get rid of a drip edge? They only have gutters.

Comments from the audience

None

Back to Board

Vic Lessard polled the Board regarding the five criteria. Bill O'Brien motioned to approve the petition subject to the condition that if the foundation cannot support the third floor, the front and side setbacks would be at four feet. Jennifer Truesdale seconded

Vote: 5-0

Petition granted

69-05 The petition of Sojourn Property Management, LLC for property located at 750 Exeter Road seeking relief from Articles 1.3 and 4.5.2 to renovate office building with addition of pitched roof over front portion of building. This property is located at Map 6, Lot 14 in a RAA zone.

Atty. Steve Ells came forward with Mr. Dumont. Mr. Dumont engaged in an extensive renovation. He obtained a building permit but was later informed by the Building Inspector that he needed to seek a variance to keep the new roof. It solves the structural problem and makes it more attractive. Mr. Dumont has received a number of letters from neighbors and Atty. Ells submitted copies of the letters to the Board. Jennifer Truesdale motioned to enter letters into record, Bill O'Brien seconded. Motion passed 5-0. Bill O'Brien asked about the plot plan. The plan uses proposed lot 1 and proposed lot 2. Atty. Ells advised that they used a survey that was provided by Mr. Cote. The proposed lots are actual lots. Atty. Ells went through the five criteria as submitted in the petition. There is no expansion of nonconforming use. It is to correct structural issues and aesthetics.

Questions from the Board

Matt Shaw asked about the overhang. The overhang is 9 inches.

Comments from the audience

Jeff Rallis stated that he has attempted to work with Mr. Dumont. When Mr. Rallis was remodeling his building he was told that he had to come before the Zoning Board to ask for expansion of nonconforming use in order to change his roof. He asked if any structural plans have been done. He is concerned that there is a roof with a door. Also, he now has run off. Mr. Rallis stated that Mr. Dumont also took out one of his boundary markers while working. He has also paved the side of his building on Warner Lane side. A person has to pull out an extra ten to twelve feet to see. Vic Lessard stated that the trusses in the middle could be 7 feet. When this was approved originally, there was to be no parking on the side. Mr. Rallis would like some answers.

Back to Board

Vic Lessard stated he thinks it is a state offense to move a boundary line. Atty Ells will submit any required plans. He also stated they have no problem with a stipulation that the area on the second story within the new roof will not be occupied. The reason for building this was to create a pitched roof to avoid a future water and snow storage problem and allow architectural detail. The intention was not to remove a boundary marker. This was a recent subdivision that went before the planning Board. Vic Lessard stated that the parking was allowed on Mr. Dumont's property in the original petition. Vic Lessard asked if they might postpone this until next month in order to get an update from Mr. Schultz. Mr. Dumont stated that they had to put in a well on the property and the stake was accidentally moved. Mr. Cote is putting back the stake. Jeff Rallis came forward again. He believes poor planning led to this. The water line should have been run in the beginning. Bill O'Brien motioned to move to next month. Matt Shaw seconded.

Vote: 5-0

Motion granted to move to next month

70-05 The petition of Horace DesRochers, Jr., through option holder Nathan Page, for property located at 121 Mill Road seeking relief from Articles 1.3, 4.2, Footnote 22 and 4.3 to create two nonconforming lots where one nonconforming lot exists. The existing lot is 3.04 acres: new lot A would become 2.02 acres, or 88,042 sq. ft., with nonconforming frontage of 39.92 feet on Ridgeview Terrace and 39.93 feet on Mill Road; new lot B would become

1.02 acres, or 44,642 sq. ft. with 100 ft. on Ridgeview Terrace. This property is located at Map 145, Lot 15 in a RA zone.

Nathan Page came forward. He advised the Board that this time he has the Footnote 22. He is not looking for any relief for setbacks. He spoke with DPW regarding drainage issue. Mr. Page submitted a letter from licensed real estate realtor regarding diminution of value. The letter states that he doesn't feel this project would decrease the value of neighboring properties.

Questions from the Board

None

Comments from the Audience

David Baxter of 127 Mill Road came forward. He stated that he offered a compromise to Mr. Page. He requested that there be a stipulation that no structure be put within 100 foot of property line. Mr. Page does not agree to this compromise. He does not feel it is reasonable. Mr. Page submitted a drawing showing the proposed compromise. Mr. Page stated the closest point to other lot lines it 50 feet as proposed. This shows that the house could be built on the lot. Mr. Baxter submitted evidence that he believes shows that it doesn't meet the Bocha requirement regarding diminishing values of surrounding properties. He referenced a case from another town that the Chairman made a comment that views have been for a long time considered for assessment purposes and have some value. He also believes there needs to be some evidence beyond a letter from a realtor regarding the effect on the value of surrounding properties.

Back to Board

Mr. Page went to the Assessor's office and asked the Deputy Assessor if it would diminish the value of surrounding properties. In her opinion it would not. Matt Shaw stated that he believes the Board has to decide if it will diminish values. His concern is creating two non-conforming lots. Tom McGuirk stated that this is a large lot it lacks sufficient frontage. He believes it is the buyer's responsibility to find out what can be done with other property before they buy their property. He doesn't believe Mr. Page should be given a restriction that would go with the land. Bill O'Brien doesn't believe the Board is empowered to put restrictions greater than required. He is concerned about footnote 22. He believes it was to prevent subdividing lots that do not have adequate frontage. Vic Lessard doesn't see a problem. Bill O'Brien is opposed because it does not meet the requirement of footnote 22. Matt Shaw feels he is within the setbacks and he has over an acre, Jennifer Truesdale has no problem. She believes taking over 3 acres and making two lots is reasonable, they could have more frontage if they finished the street. Tom McGuirk agreed. Vic Lessard polled the Board regarding the five criteria. Bill O'Brien did not agree. Jennifer Truesdale motioned to approve. Tom McGuirk seconded.

Vote: 4-1 (Bill O'Brien)

Petition Granted

71-05 The petition of Mary Burnham for property located at 3 Emerald Avenue seeking relief from Articles 1.3 and 4.5.2 to construct a dormer on northeast side of house. This property is located at Map 223, Lot 89 in a RB zone.

Mary Burnham and Jacob Miller came forward. Mrs. Burnham went through the five criteria as submitted in the petition.

Questions from the Board

None

Comments from the audience

None

Back to Board

Bill O'Brien asked that the second sentence in #3 be deleted.

Matt Shaw motioned to approve as amended. Jennifer Truesdale seconded.

Vote: 5-0

Petition Granted

Matt Shaw motioned to adjourn Jennifer Truesdale seconded at 10:30 p.m.