

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, APRIL 21, 2005**

MEMBERS PRESENT: Michael Kennedy, Chairman
Robert V. Lessard, Vice Chairman
Jennifer Truesdale, Clerk
Tom McGuirk
Matt Shaw

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

The Chairman called the meeting to order at 7:07 p.m. and Vice Chairman Lessard led the Pledge of Allegiance to the Flag. The Chairman then announced that first this evening there will be a business session to decide on a rehearing that was continued from last month. There will be no public input on this portion.

BUSINESS MEETING:

Motion for Rehearing of Petition 103-04 (2) – 83 Ocean Boulevard, 2 K Street, 89 Ocean Boulevard, 5 J Street and 91 Ocean Boulevard.

Mssrs. Lessard and McGuirk and Ms. Truesdale leave the Board for this petition. Bill O'Brien and Jack Lessard sit on the Board to make 4 members voting.

The Chairman announced that there are 2 petitions for rehearing for this petition, 1 from Mr. Michael Scanlon, Mrs. Jeannine Guzman-Scanlon, Mrs. Kimberly Barrone and Mrs. Jeanne Lilienthal, and 1 from Atty. Charles Griffin representing Dan Traficante, Trustee of Dawn Realty Trust.

The Board discussed the petitions. Some points that were made were: that the Board does not have to address each variance separately; the petition was not presented verbally because it was a revision of an earlier petition; the Board did not hold them to the Article 8 variances, but to the underlying variances which is lawful; the Board is not selectively enforcing the Zoning Ordinance, this is a special condition with 6 lots on the front on Ocean Boulevard; the Zoning Ordinance was not made to prevent condos in this area of the beach; even without variances this size building could be built on this lot, therefore not decreasing surrounding property values with these variances; there probably wasn't a view before the fire in 1999; this is not a non-conforming use as in Devaney vs. Town of Windham; 3-4 alternative plans were offered; petition meets underlying setbacks; the Board weighed the benefits versus the detriments; the building will have a state of the art sprinkler system in case of fire; this Board does not consider deed restrictions; the first step would be to get approvals for the lots as a whole and then eliminate the lot lines; Five J Street, LLC has the right to buy the land from the Town and therefore is a valid petitioner; it's difficult to determine the loss of cellular phone useage due to this building; there's not much more blockage than with McGuirk's building that is already taller than Mr. Traficante's building; the exit to the garage looks like it will hit the block wall of Mr. Traficante's building; assertions that 75% of value will be lost with the loss of antennae remittance and that the company will pull out are not factually proven.

The Board then discussed their feelings as a whole. Mr. O'Brien commented that he voted against the petition a few months back, but doesn't see anything new presented here.

Mr. Lessard said he's 100% behind the new building; it's good for the town. Mr. Shaw agrees with both.

Mr. Kennedy said that some of the points are valid concerns, but that doesn't make our decision unreasonable or unlawful.

Mr. Jack Lessard MOVED TO DENY the rehearing, SECONDED by Mr. Shaw.

VOTE: 4-0 UNANIMOUS

MOTION PASSED.
REHEARING DENIED.

At this time Mr. Jack Lessard and Mr. Bill O'Brien leave the Board. Mr. Vic Lessard, Mr. Tom McGuirk and Ms. Jennifer Truesdale return to the Board.

14-05 The continued petition of George Snow, through David Snow, for property located at 34 Mill Pond Road seeking relief from Articles 3.8, 4.1.1, 8.2.2 and 8.2.3 to construct 6 single family dwellings to be held in condominium ownership with the existing dwelling. Multi-family dwellings are prohibited in the RA Zone and allowed in the B Zone with site plan/subdivision review. 15,000 sq. feet per unit is required in the RA zone and 7,500 sq. feet in the RB zone. This project does not have the required 100 foot frontage on a public street or the required 40 foot setback from one of the boundaries. This property is located at Map 150, Lot 2 in a RB/RA zone.

Atty. Peter Saari and David Snow, applicant and builder, came to the table to speak on this petition.

Mr. Saari said that in the interim they were able to meet with the majority of the abutters. Their major concerns are Planning Board related, particularly the size of the roads leading into the property. He displayed a composite of the Hampton tax maps showing this lot and the Mill Pond Lane neighborhood that leads up to the lot. This is a large lot, 2 acres, he said. The property to the south, that is the access to this lot, is primarily smaller lots with smaller homes on them built originally as camps but the majority have been converting to year round residences over the past years. On the right hand side is a condo complex and the zone line from RA to RB is also displayed cutting the property approximately in half. His survey shows much less area in the RB zone. This part of the Zoning Ordinance has ambiguous points, his presentation uses the most conservative zone delineation. Based on the survey we have enough land in the RB zone for 3 units. In the RA zone we have enough area for 4 units. Totaling 7 from a density perspective, within the allowance of the ordinance. We could fit 17 of the lots in the Mill Pond Lane neighborhood into this lot. If we did this, we would need a 50 foot right of way off of a 28 foot road. We can't have multiple uses in a split zone. We could put a triplex in the RB zone and single families in the RA zone, but we would need a variance for that. Because the road on the right side is so near that easterly property line we would need a variance on that side. If single families were built, a 10 foot setback could be used. We need 100' frontage for multi-family. Again we could put a road in, but it would have to be larger and wider than the existing. We're not asking for more than what zoning allows. The biggest variance request is to allow multi-family in the RA zone. If you drive into the property, it will appear to be single family. It will appear less dense than the approaching roads.

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

Mr. Snow distributed plans of the proposed homes and a picture of what one would look like. One of the units will have a small addition, he said, that one will be his parent's home.

Questions from the Board:

Mr. Lessard asked where the snow will go. Mr. Snow responded that there is a big area by Mill Pond Lane.

Mr. Lessard asked if he tested for ledge. He said no, but he does know there's some there. Drainage is a big concern. Everything slopes generally towards the last lot on Glen Road and the condos. It seems to almost naturally funnel to the wetlands. These concerns will be addressed, Mr. Snow said. His surveyor, Joe Coronati, has a plan for that.

Mr. Shaw proposed he could do 5 lots in the RA zone. Mr. Saari responded that they would need a 50 foot right of way with 28 feet of pavement for a town road.

Comments from the Audience:

Randall Radkay, 72 North Shore Road, direct abutter, said he's been there 30-31 years, as have the Snows, and they've been great neighbors, but the RA zone is protected to allow only single family homes. They have 4 abutters in the Mill Pond Lane neighborhood and 4 direct abutters on North Shore Road with larger lots of 1-2-3 acres. About one-third of the property is in the RB zone and two-thirds in the RA zone. Six of the seven buildings are in the RA zone. The RA zone allows a single family home with a detached garage and an

outbuilding. They already have that. This RA lot is being used for RA, there's no hardship here. He also spoke of his animals at the back of his lot and the problems new, closer neighbors may have with them.

Byron Moe, 30 Mill Pond Lane, direct abutter, said he purchased his property primarily because of the abutting RA zone and the comfort that the configuration would remain the same. This will be a burden on the neighborhood. A minor variance is one thing, but to add 6 single family homes, massive structures, where will the water go?

Steven Bailey, 76 North Shore Road, said he's a civil engineer. He asked if mixed use is not allowed across zones then this project should be held to the mixed use dimensional requirements. He also has a large lot on North Shore Road and purchased because of the surrounding RA zone restrictions.

Sheila Young, 31 Glen Road, said she's totally against this project. This is a little neighborhood, congested as it is. Adding more traffic would be an extreme detriment.

Bob Drew, 22 Salt Meadows, President of the Association, said he represents 46 homeowners. He said the petitioner has not shown any alternatives. He could do without unit #5. If the roads weren't constructed, they could be rearranged or go smaller. The backyards won't be adequate for children to play and they will be coming over onto his property. He distributed two proposed alternative plans.

Carol Faulk, 20 Mill Pond Lane, said she has 3 children that play in the streets and ride bikes. In the summertime there are probably 20 kids that play on that road. If you add these units, it's going to be a problem.

Terry Stukowski, 80 North Shore Road, said when he purchased he did inspect the zoning and was reassured of the sanctity of the RA zone.

Alex Lawn, 22 Glen Road, said he's lived there all his life and he loves the neighborhood. He likes the idea of dead end streets. Cars go slowly through the neighborhood. If you add a loop, the cars will go a lot faster. We do have a lot of small kids in the neighborhood.

Carlene Dillon, 33 Glen Road, said the topography of this land is above hers. Any runoff will go onto her property. She questions whether they are indeed outside the 50' and 100' buffers. She sees standing water outside her patio. This will add to it. They have 36 feet of frontage on 2 public streets, that's a far cry from 100 feet. Is the existing sewer going to support 6 more houses? She bought in 1993, approximately 4 cars a day go by her property. She submitted 2 letters for people who are out of the country and asked that they be read into the record. The Chairman advised that unless they specifically asked to have them read they will not be read, but will be put into the file. Since she's been there, approximately 6 people have tried to put basements in and they have partial basements because of the ledge.

Mr. Lessard advised that possibly her water would be better because of the loop system verses a dead end.

Mr. Schultz asked if a variance was granted to subdivide this into 2 lots.

Mr. Saari agreed. Mr. Snow said it was never completed.

Edmund Wakeen, 2 Fox Road, said he's sitting on ledge. He wanted to put a sump pump in and had a lot of trouble with it. He needed to dynamite. If they have to do that it's going to create chaos underground, upsetting the entire neighborhood. This is very ill conceived.

Ron Frigon, 29 Mill Pond Lane, said he's against the project. A fire truck can't even get around the corner of Fox Road to Glen Road. It needs to back up a couple of times. Two cars can't even pass at the same time on Mill Pond Road. This neighborhood was probably set up more than 60 years ago. It's grandfathered in. This property was sold as the lot size it is. They must've had a variance to build the existing house with that existing frontage.

Mr. Saari said the subdivision plan is dated 1947. Mr. Lessard said they were advertised as camps back then.

Nancy Shinnars, 7 Mill Pond Lane, said she's concerned with traffic and safety. She distributed pictures of the neighborhood in the winter time.

Ms. Truesdale read 3 letters into the record opposing the petition: Mr. & Mrs. Robert Tirrel, 17 Mill Pond Lane, Elaine Riley, 18 Mill Pond Lane, and Joyce and Ed Melanson, 43 Salt Meadows.

Irene Moore, 16 Mill Pond Lane, said she's about the 5th house on Mill Pond Lane. This neighborhood is known as "ledge city". The blasting that has gone on has effected the homes in the neighborhood.

Ed Flanagan, 39 Mill Pond Lane, said he was pumping water last week out of his cellar. He's concerned with snow removal and drainage.

Bob Giese, 27 Mill Pond Lane, said he's concerned with sewer backups on Glen Road.

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

Comments from the Board:

Mr. Saari rebutted that a lot of the concerns are Planning Board issues: i.e. drainage, traffic and sewer. They require the applicant to hire experts. As far as congestion, this lot will be less dense than the neighborhood. The Snow house does have a basement. There was a lot of blasting at Salt Meadows, it's now a good project. This is a single family area, we have a 20' setback, we could have 10 feet. He doesn't see anybody raising a valid point against the variance.

Allen Dillon, 33 Glen Road, said since the petitioner has not included any measurements we cannot make any determinations on the size. Maybe 4 or 5 homes in our neighborhood are more than 1 story. He was shown the plans Mr. Snow presented of the proposed homes.

Edmund Wakeen said this condominium will change our neighborhood from a laid back single family neighborhood to a condominium neighborhood.

Mr. Drew commented that traffic flow and utility were made part of the criteria when Mr. Saari mentioned it.

Mr. Shaw said he can't see how this will benefit the town and help the existing property values. 4 bedrooms, times 6, that 24 bedrooms added to the existing house, that's 27 bedrooms here. That's a lot. There's at least 2 cars per house and probably 3 or 4 when the kids grow up. Maybe something in between would be more reasonable. If there were 2 buildings, he'd be more apt to be for it. He couldn't vote for this.

Ms. Truesdale feels this is an awful big project at the end of 2 skinny streets. She doesn't see how it could benefit the neighborhood.

Mr. Lessard spoke of the blasting and ledge in the area. It's a good layout, but he couldn't vote for it.

Mr. McGuirk doesn't think it will ever get through planning. He's concerned with public interest. There's a lot of ledge. Ledge is unpredictable. He's concerned with drainage. The North Shore Road lots are all about the same size. He also has a problem with the hardship criteria.

Mr. Lessard MOVED TO DENY the petition based on lack of hardship, SECONDED by Mr. McGuirk.

VOTE: 5-0 UNANIMOUS

PETITION DENIED.

A break was taken from 9:26 to 9:35 p.m.

16-05 The petition of Lewis Irrevocable Trust, through option holder Brian Hayes, for property located at 486 Winnacunnet Road seeking relief from Articles 4.1.1, 4.2, 8.2.1, 8.2.2, 8.2.3, 8.2.4 and 8.2.6 to replace existing residence with a five unit residential condominium. This property is located at Map 222, Lot 82 in a RB Zone.

Atty. Steve Ells and Brian Hayes came to the table to speak on this petition.

Mr. Ells said this property is currently improved with a single family home and a detached garage. The plan is to remove the existing structures and replace them with a 5 unit residential condominium. There are 9 original lots of record, 20 feet in width. The existing frontage is on Winnacunnet Road. The proposal is to use Surf Street off Bonair Avenue as access. The building will be 3 stories in height. The ground floor is a garage.

There are 2 spaces under each unit. The neighborhood is currently condos. RB zone allows multi-family. The proposal has a staggering look in keeping with various duplexes in the area. The proposal is reduced from 6 to 5 and the building will be placed on a slight angle and pulled off the sidelines some from the previous proposal. There are 10 foot side setbacks. We've asked for the frontage variance because of Bonair Avenue, he said. The 9 tiny lots will become 1. He read through the 5 criteria as presented with the petition.

Questions from the Board: None.

Comments from the Audience:

Connie Lamore, 11 Bonair Avenue, is concerned with Surf Street and the increase in traffic. She's concerned that residents of this complex and their guests will be using her driveway to pass by each other. She's also concerned with her potential loss of view of the marsh and new view of a tall building. She bought 2 years ago. Acadia and Bonair are very heavily traveled, she said. 2 guests spaces are not enough, people will be parking on the road.

Jim Tuttle, direct abutter, said he's owned for 27 years the property immediately to the east. He feels this is way too much. He would like to see something put in there. There's a 3 unit across the street without enough parking and they're always parking on Winnacunnet Road in front of his property and this property. There are mostly duplexes in the neighborhood, 1 -4 unit across from Acadia and the 3 unit he mentioned. Where's the water and snow going to go? He has a problem at his house with snow. This is over utilization of the property. Where are the kids going to play? 7 variances is a lot of variances.

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

Mr. Ells said these concerns are regulated by the Planning Board. Curbing would be an option along Mrs. Lamore's driveway. She does not have a site/view easement. This will not devalue her property. Her property may be slightly less desirable. We are paving 62% of the site where 85% is allowed. The neighborhood is condos. We will be eliminating 9 potential small lots here. We're asking to use 5 lots where 9 exist.

Comments from the Board:

Mr. McGuirk commented that Ms. Lamore doesn't own the view, Surf Street is Town property.

Mr. Lessard said he would want the driveway out to Surf Street. It is tight. These 9 lots couldn't all be built on.

Mr. Shaw clarified that there are 2 stall garages, this is the RB zone.

Mr. Kennedy said he's not a big proponent of large condos on Winnacunnet Road. He agrees it's may be less desirable for Mrs. Lamore but it wouldn't devalue her property. He would like to see something smaller, but feels he's met all the requirements.

Ms. Truesdale MOVED TO APPROVE the petition as presented subject to the petitioner taking appropriate action to mitigate water/drainage issues and eliminate use of or trespass on the neighbors' property, SECONDED by Mr. Shaw.

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: 5-0 UNANIMOUS

PETITION GRANTED.

The meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Angela Boucher, Recording Secretary