

**AMENDED MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, JUNE 15, 2006**

MEMBERS PRESENT: Robert V. Lessard, Chairman
Tom McGuirk, Vice-Chairman
Jennifer Truesdale
Bill O'Brien, Clerk
Matt Shaw
Jack Lessard, Alternate (sits in for premeeting & pet. 27-06)

OTHERS PRESENT: Angela Silva, Recording Secretary

The Chairman announced, to the audience, that he wanted to discuss a few things with the Board before the meeting began. He then explained to the Board the secretarial position and the offer from Angela Silva to take the vacant position.

Ms. Truesdale **MOVED** to accept the offer from Mrs. Silva, **SECONDED** by Mr. O'Brien.

VOTE: For 6-0 unanimous

MOTION PASSES.

The Chairman then announced he would like to consider the minutes of May 18, 2006. He went page by page with Mr. O'Brien making some corrections to page 7 (see final draft).

Mr. O'Brien **MOVED** to accept the minutes as corrected, **SECONDED** by Mr. Jack Lessard.

VOTE: For 5, Oppo 0, Abst 1(JT)

MOTION PASSES.

The Chairman announced that petition #32-06 for 706 Ocean Boulevard has been withdrawn from the agenda this evening. He then asked Mssrs. Nigrelli and Donahue if they would allow the 2 smaller petitions to occur before them and they agreed.

Mr. Shaw **MOVED** to allow petitions 30-06 and 31-06 to be heard before #27-06, **SECONDED** by Ms. Truesdale.

VOTE: For 5, Oppo 0

MOTION PASSES.

30-06 The petition of Henry & Mary Jo Stonie for property located at 1050 Ocean Boulevard seeking relief from Article 4.5.2 to construct a two car garage with storage loft 7 feet from the left side lot line in order to preserve a fire access land of 19 feet on the right side line. This property is located at Map 116, Lot 2 in a RA zone.

Mr. Henry and Mrs. Mary Jo Stonie came to the table to speak on this petition. Mr. Stonie said he's been living at this property for 30 years, and has been in Hampton over 40 years. He built the home. This petition is to construct a garage 7 feet from the left lot line as shown on the plot plan. The dimensions of the building cannot correspond to the existing increase in the RA requirements, he said. In the early 1900's this area was subdivided into contiguous 50 foot wide lots. A number of homes have built garages. Out of the 30 lots, only 3 or 4 are without a garage. The reason for the location is so that the entrance isn't directly off the street. He will keep the tall shrubbery at the street. You will pull in and turn left to enter the garage. It will be built on the hot top that exists presently. This will allow a driveway of 19 feet in width up to the house. This is a fire safety precaution. A fire truck needs about 18 feet, he said. This neighborhood is RA because of the

location, not because of the lot configurations. He went on to say he's getting too old to deal with the snow and ice on the cars. He then read thru the 5 criteria as submitted with his petition.

Comments from the Board: None.

Comments from the Audience: None.

Back to the Board:

Mr. O'Brien asked what utilities were going to be extended to this new garage. Mr. Stonie responded electrical. Mrs. Stonie said there will also be a sink. No living area, they both agreed. The loft is for storage purposes only.

Mr. O'Brien MOVED to approve the petition, with the condition that the building is never to be used for living quarters, SECONDED by Ms. Truesdale.

The Chairman polled the Board on their opinion that this petition meets the 5 criteria for granting a petition. They all agreed it does.

VOTE: For 5, Oppo 0

PETITION GRANTED.

31-06 The petition of Stephen O'Neil for property located at 2 Battcock Avenue seeking relief from Articles 1.3 and Article 4, Table 2 as to 4.5.1 and 4.5.2 to construct a second floor which would not meet the front and side setbacks. This property is located at Map 281, Lot 51 in a RB zone.

Mr. Stephen O'Neil and Mr. David Joaquin came to the table to speak on the petition. Mr. O'Neil said he would like to add a 2nd story to his ranch and remodel the existing first floor. He has lived there for 5 years. The home needs a lot of work and more living area. He then read through the 5 criteria as submitted with his petition.

Questions from the Board:

Mr. O'Brien asked for the front setback. Mr. O'Neil said it's currently 8 feet. The Board discussed the submitted plan and the pictures showing a larger set of front stairs. The Board is concerned that the front setback is not met either and maybe a variance is needed for that too. He can't be closer than 4 feet to the front lot line. An option would be to turn the stairs parallel to the house if need be. The Board asked for corrected drawings. Mr. Joaquin said he drew that plan before the house was raised. He will correct the plan.

Mr. McGuirk commented that this is the 2nd petition in the last 6 months that raised the building and did substantial work and now needs a variance. He feels they should have to come to this Board before raising and adding a foundation in case the Board would like the building to be moved at that time. The Chairman said years ago, it was determined by the Board that a petition isn't needed to add a foundation only if the home is in exactly the same spot.

Mr. O'Brien asked if there is a foundation under the rear deck. Mr. O'Neil said no, it will be cantilevered.

Mr. O'Brien MOVED to grant the petition subject to new plans being submitted to show the correct front steps, which should be no closer than 4' to the front lot line, SECONDED by Mr. McGuirk.

The Chairman polled the Board on their opinion of this petition meeting the 5 criteria. They all were in agreement.

VOTE: For 5, Oppo 0

PETITION GRANTED.

Mr. McGuirk reiterated his feeling that when adding a foundation one should have to come to this Board, if the existing location of the building is non-conforming.

27-06 The postponed petition of Pamela Kopka, Lois Page and Page's Meadow, LLC through option holder Page's Meadow, LLC for property located at 180, 180R and 200 Drakeside Road seeking relief from Articles 4.1.1, 4.4 and 4.7 to allow 96 units where 88 units are allowed and 58 units have received Site Plan Review Approval; to allow 2 buildings with 3 stories not to exceed 49.5 feet in height where 35 feet is permitted and to allow the number of units per building to exceed 8 with 2 buildings containing 24 units each. These properties are located at Map 172, Lots 12, 12-1 and in 10 in a G zone.

Vic Lessard steps down as Chairman. Mr. McGuirk is now Chairman and Jack Lessard sits on the Board.

Mr. Tom Nigrelli, Principle of Pages Meadow, LLC, and Atty. Michael Donahue came to the table to speak on this petition. Mr. Nigrelli said he is proposing to acquire the adjacent 2 parcels of land. One is approved for 12 units, and the seconded is the Page Aluminum property which contains a showroom, 2 apartments and a warehouse. He proposes to mimic the 48 units that have already been approved (on lot 12-1) on these adjacent parcels. These older buildings will be replaced with 2 similar buildings, with central parking between the 2 buildings. The remaining land will be held under a conservation easement. These new buildings will be the same as approved on 172-12-1, with just under 50 feet in height and peaked roofs. He is attempting to make a uniform, homogenized look. His financing is in place.

He went on to say the he is proposing 2-24 unit buildings where 10 are approved by the Planning Board and the Page's property which is completely out of character for the neighborhood. There are all homes along Drakeside Road, really no businesses. This proposal will generate a half million dollars in 2006 tax dollars. We are able to build 74 units. We are asking for 96. The Page's property probably would've been allowed 10-12 units just like the Kopka property. It will look like it belongs. When we bought the Berry/Woodlman property, it changed the look of Drakeside Road. These 3 properties already have approvals for 48, plus 12, plus the Page's property. The property is already surrounded by a significant conservation area, Town owned land, State owned land and private owned land. There is 82 acres of undeveloped land around this property. Ninety-six condos on 100 acres of land is not too many units. We are providing for public access into the conservation land and Town land. He asked the Board to consider this favorably.

Mr. Donohue explained that by combining these 3 parcels, we have the effect of being able to augment the open space. He then distributed a chart he constructed showing an open space analysis for the 2 new lots and buildings only. He divided the open space evenly between the 4 buildings in his analysis. The Kopka and Page properties will have direct access to the conservation land. There will be a 40 foot buffer all around the property. Some of that buffer will be in the area where there is an existing building on the Page property, which is close to that westerly lot line. There will be a 40 foot setback from the road. This will enhance the residential character of the neighborhood. He then read through the 5 criteria as presented with the petition. We're not asking for 4 buildings, he said, 2 are already approved. These new buildings will have the same sighting as the others. This layout will preserve and create a view corridor to ensure open space. The commercial use is not consistent with the neighborhood. That will be removed. We build a quality product. A disproportionate tax revenue will be created. There are other multi-family developments on the street. This area is appropriate for vertical development. The footprint is a little bit bigger than what's already approved and existing. This is just an area variance. This is a permitted use. The previously approved 48 units have been to Superior Court and they upheld the ZBA's decision to approve. The variances themselves are minor in impact. The gain to the

public is substantial. Retail sales and many other uses are permitted here. The Town's goal is to preserve wetlands and resources. We are giving up 7 acres of upland and creating public access, These new units will have direct access to that conservation land. This proposal will remove the incompatible business use.

Questions from the Board:

Ms. Truesdale questioned why there are only 2 buildings noted in the posting and not 4. She feels this is confusing and misleading.

Atty. Donohue said that's because they're only asking to add the 2 additional buildings, the other 2 are already approved. Why would we ask for approval for the 48 units we already have?

Mr. McGuirk feels we're here for 24 units on the Kopka property and 24 units on the Page property.

Mrs. Truesdale said there's no way she'll vote for this without clarification from the Town Attorney. She's feels it's confusing and noticed wrong.

Mr. O'Brien questioned the open space analysis and why it didn't include all three parcels. There was 952,000 on the original piece and now 476,126 is allocated to these parcels.

Mr. Donohue said they're applying for relief from 2 existing parcels. It's up to the Board what they want to do. She (Ms. Truesdale) feels there's confusion. She's not going to vote favorably. She needs the attorney's advice.

The Board decided to take a 5 minute recess at 8:30 p.m. so that this could be discussed privately by the petitioners and the Board, separately. They reopened the meeting at 8:40 p.m.

Mr. Donohue thanked the Board for the opportunity to recess. He conferred with the Pages because they are most at risk. We believe the notice is not only correct, but adequate. Mr. Page pointed out, he said, that with any level of interest in a particular application one can go to the Building Department and view the details. The Town prepared this notice. The notice dealt with the way the Building Inspector viewed the application. It clearly says 96 units. There's a lot of people here. He would like to proceed. But if you can't hear the petition without getting it clarified, we respect that.

The Board decided to continue.

Comments from the Audience:

Jack Murningham, 101 Hampton Meadows (HM), said he is a resident and is on the Board of Directors of the HM Condo Assoc. He represents 153 homeowners who collective pay out more than 1 million in property taxes to the Town of Hampton. He asked if this were going to be condos? Mr. Nigrelli responded yes. He said the Kopka parcel is approved for 12 units with a 35 foot maximum height. They want to increase it to 24, that's twice what's allowed. How is there a hardship if they're already approved for 12 units? We feel it will diminish our values, we are opposed to this project. We want them to abide by the 2003 Zoning Ordinance.

Mr. Donohue said this is an area variance. We don't have to prove the zoning restriction interferes with the reasonable use of the property. We have to prove: 1. these variances are needed to enable the applicant's proposed use of the property given the special conditions of the property, and 2. the benefit of the project to the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the variances sought. There are many uses permitted here. The existing lots are inconsistent with the area. The Kopka property is a single family residence that looks out on HM, a multi-family development. Our proposal is to give a

nature of development consistent with the neighborhood and to seek relief for a vertical use. The footprint will not be significantly greater than the approved building. Is there another way reasonably feasible to do what we want to do? We're asking to build similar to what exists and has been approved. The benefit can't be achieved by some other method reasonably feasible. We divided the conservation land into quarters to show and even distribution among the 4 buildings. We're providing access to that conservation land to these new buildings.

Mr. Murningham argues that this will diminish the value of the neighborhood. There are 2 houses at 102 & 104 HM that have been on the market in excess of 4 months. He thinks this is because of the development that is going to go up across the street.

Mr. McGuirk argued that the length of time is indicative of the real estate market right now. This is normal. Interest rates are up, maybe those units are much too big (is what he hears from people), 4 months is not a long time.

Mr. Nigrelli argued that if the Page Aluminum building were not there, maybe they would sell. Right after we won the court case, unit #3 sold in 4 days for 500,000 dollars. The market is soft. This will not diminish the value of HM. The Page Aluminum building diminishes value.

Mr. O'Brien informed the HM people that we are now using the 2006 Zoning Ordinance.

Joyce Beal, 109 HM, said she went to the Town Office and read the paragraph that to receive a variance one must show they meet 5 criteria. She thinks this fails to meet hardship. They want a 41% increase in the height, and a 20% increase in the number of units allowed. This will allow 200 more cars on Drakeside Road. The road is collapsed in that area. She's been there 2-3 years and the road has gone to hell in that time. People ask for too many variances in this town. She does not agree this will enhance property values. She would not have bought there if she knew all these 50 foot buildings were going up.

Nathan Page, 200 Drakeside Road, said this is all general zone. There is RA near route 1.

John Servetnick, 93 HM, said he's concerned about impending traffic. Last month the bridge on Route 27 was closed for a couple of days and that traffic was rerouted to Drakeside Road. There were 25 cars stacked up on Drakeside waiting to enter Route 1. By adding 96 units, there could possibly be 200 more cars using that road. There is a dangerous situation with the entrance and exit opposite the HM entrance. Cars coming out won't know if they're turning left or right. Plus there's cars coming around the corner and there is no street light at Route 1.

Bill Murphy, 126 HM, said he's taken back by the scope of this proposal. They want to increase the number of units by 60% and height by 40% and not have to go back and look at the totality of variances for incremental increases. This is going to change the lifestyle of the people who live in the area.

Jane Quayle, 55 HM, said Mr. Nigrelli did a great job on HM. The neighborhood will change drastically with this new development. She is a partner at Quayle/Congdon Real Estate and has been in real estate since 1971. She knows HM will decrease in value. The Page property may be a little unsightly, but it is quaint.

Ray Weaving, 36 HM, doesn't believe the hardship is there. He wouldn't have financing in place if he weren't prepared to go ahead with what's already approved.

Grace Murningham, 101 HM, is opposed. She doesn't feel the developer's needs are more important than their safety. She doesn't believe some of the other uses are less compatible, she would welcome a pig farm. She also read a letter from the Lombardi's at 102 HM opposing the petition.

Warren Doyle, 29 HM, is opposed. These are major deviations from the Hampton Zoning Ordinance. This is not in the best interest of the public. The number of units is exceeded by 20%, height by 41%. They want to increase density and height. They will detract from the attractiveness of the area. This could result in a decrease in property values. They should put a warrant article on the ballot to rezone. This is contrary to public interest and will be an injustice to the public. This doesn't meet any of the 5 criteria.

Penny Gillis, 35 Drakeside Road, said a lot of people get stuck at the railroad bridge and this will create a lot of traffic. She runs on the road all the time. Her son was hit by a car on this road. The traffic is progressing. We vote you people in, she said, enough is enough.

Nathan Page, 200 Drakeside Road, said he has had a long history with Drakeside Road. His mother was born in Anne Russell's house. There was more traffic before and the road was less improved than today. EBPA had 400 employees going up and down that road every day. There were 185 units originally approved at the HM site. The density will now be spread out over that whole field. He feels the notice is adequate. He was going to come in and see about maybe adding 6 units. You receive a notice and you come down and look at the plan. It references 96 units. He had to get 4 variances for a single family home, on a single family lot, in a single family neighborhood. Four is not a lot of variances. The 11 foot bridge has been a problem since the early 1900's. People go fast on that road. If you go 30 m.p.h. you cause a traffic jam. He said he's in favor of the project. He thinks it will be a good addition to the neighborhood.

Maurice Friedman, 30 HM, said this is a preponderance of shoe horn planning. He likes the view across the marsh. This application doesn't have any meat. There are statements being made without justification. This is not minor in impact. Some people paid 20 thousand extra to look at the woods. That changed of course with the 3 story buildings built behind them. How much less would it be worth to look at 3 story buildings versus a neighbor? He sees no proof of not diminishing value. Appleton is pretty much hidden from the road. He's not sure what revenue increases has to do with a variance. He is on the Budget Committee, and we do have to increase revenues, but not at the expense of the property owners of the Town. He would prefer a restaurant to the 4 buildings.

Nathan Page said the units at HM were not selling very fast because they put up a sign and the association said to take it down. Then they put it on Town land and the Town told them to move it. If you use a different style of selling your home, such as selling it yourself, sometimes it may take longer.

Mr. Donahue, when asked, said the land hasn't been deeded over yet. The statement that the first man read from the association was a 2005 statement that opposed the first 2 buildings. The Town engineer reviewed the traffic study and concluded that there was no negative traffic impact. This was also presented in the court case. There will be another study completed for this project. That's a Planning Board subject. This doesn't mean Mr. Nigrelli isn't concerned with the condition of Drakeside Road.

Mr. Nigrelli said as part of the approval of Hampton Woods and Appleton, he was obligated to extend sewer up Drakeside Road to the property. It appears to him the sewer and water lines are allowing water to come down from the hill, disrupting the road. He was able to take a shovel and insert it 2 feet into the mud under the road. He would make any necessary improvements from the hill to the Page property. This would cost about a half million dollars.

Mr. Donahue said the entry way is lined up to HM entrance because it is the preferred method our consultant and the Town's consultant wanted. Also they are supposed to add a sidewalk. These are site plan review issues. The Planning Board spent a lot of time and had consultants.

Back to the Board:

Mr. Shaw said there are 48 approved units, 10 on the next lot, and 3 in the Page's property. That equals 61. Plus the additional 48 units are going to add a lot more traffic. If all these lots were built separately, you'd probably have about the same traffic. The road should get fixed. With the 50 foot height, the court agreed with us. This proposal will clean up the area. 25 years ago this was nothing but a cow farm. He used to sit up there and not a car would go by for an hour.

Mr. O'Brien is concerned with the analysis chart. The original property did show hardship. They want to put in an extra 2 buildings with no additional conservation land. They are voluntarily creating their own hardship. The 2nd lot in already has 10 units. The first (westerly) lot could possibly have something similar built on it.

Mr. Donahue suggested that the Board consider the fact that it is the Pages who are the applicant here. Just because we own the adjacent lot doesn't make the hardship self-created for Page or Kopka.

Mr. O'Brien said Lot 10 is trying to get a benefit and relief from a 435,000 square foot conservation easement that's already been agreed to.

Mr. Donahue agrees the conservation easement will go thru either way. But with this proposal these two new buildings will own an interest in the conservation land. This is an added benefit to Page and Kopka. The benefit is substantial.

Mr. O'Brien said he doesn't except the argument for 2 more buildings and not adding to the conservation easement at all.

Mr. McGuirk agrees with Drakeside Road problems and safety issues. The Town has to step up to the plate, he said. It is a thru street. Sidewalks would help. Is what Mr. Nigrelli proposing to do a good argument? Is he creating an unbalanced market? Is he affecting HM sales? Last month we had a real estate agent on the Maranatha petition say if you increase the quality of the structures around you, you increase the value around you. Four in a row, alike, will give continuity. Drakeside Road doesn't have that. There's plenty of frontage and land in the back. The street is a Planning Board issue, not ZBA. There are issues there, but lets give them to the right people (to discern). A lot of these arguments are Planning Board. He doesn't think the values will be conversely affected.

The Chairman polled the Board on whether they agree the 5 criteria have been met. There were 2 yeses, Mssrs. Shaw and McGuirk, and 3 no's, Ms. Truesdale, Mr. O'Brien and Mr. Lessard.

After a short discussion, Mr. Shaw MOVED to approve the petition, Mr. O'Brien SECONDED for purposes of a vote.

VOTE: For 1(TM), Oppo 3(JT,BO,JL), Abst 1(MS)

MOTION FAILS.
PETITION DENIED.

Ms. Lessard MOVED to adjourn the meeting at 10:15 p.m., SECONDED by Ms. Truesdale.

VOTE: For 5

MEETING ADJOURNED.

Respectfully submitted,

Angela L. Silva,
Recording Secretary