

**AMENDED MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 17, 2006**

MEMBERS PRESENT: Robert V. Lessard, Chairman
Tom McGuirk, Vice-Chairman
Bill O'Brien, Clerk
Matt Shaw
Jack Lessard, Alternate

OTHERS PRESENT: Angela Silva, Recording Secretary

The Chairman called the meeting to order at 7:00 p.m. and asked Mr. Henry Stonie to lead the Pledge of Allegiance to the Flag. He then introduced the members of the Board and called for a review and approval of the minutes of July 20, 2006.

Mr. O'Brien **MOVED** to accept the minutes as written, **SECONDED** by Mr. Shaw.

VOTE: 5 For, 0 Oppo

MOTION PASSES.

37-06 The continued petition of Elizabeth Arsenault for property located at 599 Ocean Boulevard seeking relief from Articles 2.3.4.B, 4.1.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4 and 8.2.6 to allow existing building to be razed and new multi-family dwelling to be constructed. This property is located at Map 235, Lot 19 in a BS zone.

Mr. George Fredette representing Compass Rose LLC came to the table to speak on this petition.

He explained that this petition was postponed from last month to provide additional information. The building drawings needed to show the elevator and utility room, water meter room and the elevator equipment room, and possibly more critically the height of the building. The plans now show a height of 45'11" at the front, 48'2" at the highest point at the rear. The side heights were taken from various survey points with an average height of 47'11".

Mr. O'Brien asked for some clarification on the plans. Mr. Vic Lessard said he also visited the property himself and shot some grades. He's fine, he said.

Mr. Fredette went on to say the lot is 6800 square feet and 2 apartments exist presently. He proposes to remove the building and construct a new building with parking at grade and 3 levels of living space consisting of 5 dwelling units, two on the 2nd level and 3rd levels and 1 on the 4th level. The front of the building will be redeveloped and landscaped, the driveway will be on the south side of lot with parking under and at the rear. There will be a paved surface under the building and pea stone for parking at the rear containing 5 additional spaces. We're asking for relief from density. We have 6800 sf where 2500 sf per dwelling unit is required. We're also asking for relief from recreation area, frontage, setback to wetlands, open space buffer around the perimeter and between the building and the parking. These are mostly article 8 (multi-family) requirements.

Mr. Fredette then read through the 5 criteria as submitted with his petition. Apartment units are desirable along Ocean Boulevard, he said. The building is in need of improvements visually and the mechanical systems. The maintenance is becoming more burdensome. The parking configuration will be improved with respect to the current parking backing into the right of way. This will increase the tax base. This is consistent with the ordinance because it's a permitted use in the BS District.

The current life, safety and building codes will be met. Substantial justice will be done because there will be improved parking, site, building, neither apartment is handicapped accessible and maintenance costs are high. This is similar to abutting uses. Property values will increase because of this improvement. The architectural appeal of the building will be better and the marshland will be protected.

Questions from the Board: None.

Comments from the Audience: None.

Back to the Board:

Mr. Shaw said he'd rather see 4 units.

Mr. O'Brien asked the petitioner to verify the grade at 7.09 currently, and the proposed grade.

Mr. Fredette said yes, today and proposed.

Mr. McGuirk said his only concern is 2.3.4b and putting 4 parking spaces in the wetlands setback.

Mr. Vic Lessard said he doesn't think this Board can give relief for the wetlands setback. He will have to go to the Planning Board and the State Wetlands Board. If we approve this, it will be subject to those boards.

Mr. O'Brien feels, technically, their approvals should be received first. But that's not how it has been done here in the past.

Mr. Fredette said he consulted with Mr. Schultz. This is the Zoning Ordinance and he felt the place to get relief is here.

Mr. Shaw reiterates he thinks 4 is enough. He needs 12,500 square feet and has 6800.

Mr. Fredette said he can show examples of more dense properties.

Mr. Shaw agrees but feels maybe everything is getting out of control. This is a nice project, but it's too much. Mr. McGuirk agrees.

Mr. O'Brien is flexible. He likes the roof angle - it's not flat. The number of units doesn't bother him.

Mr. Shaw asked if there's another feasible way to do this.

Mr. Fredette spoke with the property owner and they agreed that 4 units would be feasible.

Mr. McGuirk feels the abutters should be renotified. Mr. Shaw doesn't.

Mr. McGuirk would like to vote on this as presented. Mr. O'Brien feels 4 units would be a substantial change.

Mr. Shaw **MOVED** to deny the petition, **SECONDED** by Mr. McGuirk.

VOTE: For 5, Oppo 0

**MOTION PASSES.
PETITION DENIED.**

The Chairman asked the Board if they felt 4 units would be a substantial change. They agreed.

Mr. Shaw reported that he watched the Planning Board meeting regarding the harbor project. They asked the Selectmen for a liquor license after we said there will be no public restaurant there.

41-06 Withdrawn

42-06 The petition of Henry & Mary Jo Stonie for property located at 1050 Ocean Boulevard seeking relief from Article 4.5.1 to construct a two-car garage with storage loft having a like siting and distance of 9 feet from the front lot line similar to an adjacent garage on the next contiguous lot. This property is located at Map 116, Lot 2 in a RA zone.

Mrs. Stonie came to the table to speak on this petition. She said she made a mistake the last time she was here. She wants her garage to be in line with the abutter, with a 9 foot front setback. With the original proposal the garage will be too close to the house. She read through her responses to the 5 criteria.

Questions from the Board:

Mr. O'Brien asked if she was previously granted a variance for the front setback? She said no, for the side.

Mr. O'Brien said now you're pulling it forward, it was within 5 feet of the house? She agreed.

Mr. Shaw clarified that she already received the variance for the side setback. She will still be able to pull along the side up to the house. Yes, she agreed.

Comments from the Audience: None.

Back to the Board:

Mr. Jack Lessard MOVED to grant the petition, SECONDED by Mr. McGuirk.

The Chairman polled the Board on their acceptance of the 5 criteria. They all agreed.

VOTE: For 5, Oppo 0

MOTION PASSES.
PETITION GRANTED.

43-06 The petition of Ron & Fran Sanborn for property located at 58 Brown Avenue seeking relief from Articles 4.5.2 and 4.5.3 to construct a 6'x8' shed one foot off the property lines instead of the required 4'. This property is located at Map 282, Lot 147 in a RB zone.

Mr. Ron Sanborn came to the table to speak on the petition. He said if he had to put this shed 4 feet from the property line it would significantly restrict the available space of the lot and hinder the overall movement and flow on the lot. All his neighbors have sheds 1 foot off the lot line. He then read through the 5 criteria as presented with his petition.

Questions from the Board:

Mr. O'Brien asked if any of the abutters came in for a variance. It was unknown.

Comments from the Audience: None.

Back to the Board:

The Board discussed the distance from the house to the shed. The submitted plan is not to scale. The shed will be smaller than it looks on the plan.

Mr. Jack Lessard MOVED to grant the variance, SECONDED by Mr. Shaw.

The Chairman polled the Board on their acceptance of the 5 criteria. They all agreed.

VOTE: For 5, Oppo 0

MOTION PASSES.
PETITION GRANTED.

44-06 The petition of Hilaire Lavoie for property located at 37 Highland Avenue seeking relief from Articles 1.3 and 4.5.1 to construct roof over existing front porch. This property is located at Map 274, Lot 120 in a BS zone.

Mr. O'Brien was concerned with all the abutters being notified. Mr. Lavoie said the Building Inspector's office called him last week and he did obtain those additional abutters and they were notified. The Chairman verified that they were sent certified letters.

Mr. Lavoie said he would like to put a roof over the existing front porch. He then read through the 5 criteria as submitted with his petition.

Questions from the Board:

Mr. Lessard verified that he's adding a roof only. It's not to be closed in. It cannot be made into a 3 season porch. Mr. Lavoie agreed.

Mr. O'Brien asked if the roof is already there.

Mr. Lavoie responded yes. In January he applied for a change to his building permit to add a roof to the deck. When he called the office after not hearing anything for a week or so, the secretary said he was all set. Then Chuck, the Building Inspector, informed him there was a problem with his permit and he would have to apply for a variance.

Mr. McGuirk felt it helped his situation to see the roof already there. It doesn't hinder any line of sight.

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

The Chairman polled the Board on their acceptance of the 5 criteria. They all agreed.

VOTE: For 5, Oppo 0

MOTION PASSES.
PETITION GRANTED.

45-06 The petition of Leila Harrington and Timothy Nerat for property located at 16 Susan Lane seeking relief from Articles 1.3 and 4.5.1 to replace and improve older porch structure on house. This property is located at Map 281, Lot 78 in a RB zone.

Ms. Leila Harrington and Mr. Timothy Nerat came to the table to speak on the petition.

Mr. Nerat said he is looking for a variance from the front setback to replace and improve an older porch structure on the house. He read through his responses to the 5 criteria as submitted with the petition.

Questions from the Board: None.

Comments from the Audience:

Mr. Leo Mercier, 20 Susan Lane, supports the petition.

Back to the Board:

Mr. O'Brien read 3 letters in file: 2 opposing the petition and 1 supporting.

When asked by the Board, Mr. Nerat said he already has a second story porch. He plans to build a roof underneath it for the farmer's porch. The second floor deck will not be any larger. He's only asking for 1'8". The stairs are already out to a 14'8" setback. The stairs are the encroachments. The deck will be moving out 2 feet, from 4 feet deep to 6 feet.

Mr. McGuirk said if your meeting the setback, your neighbor can't complain about the view. But you're already encroaching on the setback, she can complain about the view.

Ms. Harrington said they've spoken to all the other neighbors, they're all in favor of this.

Mr. Mercier explained this property is on the west side of that abutter. They'll only be missing 2 feet of a marsh view. He doesn't think they have anything to complain about. He hopes the Board approves this. It will improve the neighborhood.

Mr. O'Brien MOVED to grant the petition subject to the condition that the existing balcony remain exactly the same and the farmers porch will never be enclosed.

The Chairman polled the Board on their acceptance of the 5 criteria. They all agreed.

VOTE: For 5, Oppo 0

MOTION PASSES.
PETITION GRANTED.

46-06 The petition of Alan Painten for property located at 96 Glade Path seeking relief from Articles 1.3, 4.5.2 and 4.5.3 to replace an existing storage shed in disrepair with a new 10'x10' storage shed. This property is located at Map 262, Lot 15 in a RCS zone.

Mr. Alan Painten came to the table to speak on the petition. He said he would like to be allowed to replace an old dilapidated shed with a new one. He read through the 5 criteria as presented with his petition.

Questions from the Board: None.

Comments from the Audience: None.

Back to the Board:

Mr. Jack Lessard asked if the new one will be the same size? Mr. Painten said it will be a little bigger. It was 6x6, and will be 10x10.

Mr. McGuirk asked if the shed is already there? He said yes.

Mr. Vic Lessard asked when he put in for the permit? He said the Building Inspector saw him working and told him to come into the office and apply for one.

Mr. Vic Lessard asked if it was built in place? He said yes.

Mr. Shaw asked if it's on blocks? He said yes.

Mr. Vic Lessard commented that we could make him move it.

The Board discussed the closeness of the shed to the house. They discussed moving it 1 foot back, but the neighbors weren't notified. They discussed attaching it to the house.

Mr. McGuirk MOVED to approve the petition subject to attaching it to the house per the Building Inspector's approval and in no way can it be used as living space, SECONDED by Mr. Jack Lessard.

Motion and second were withdrawn.

Mr. O'Brien MOVED to postpone this petition until the Building Inspector can be consulted, SECONDED by Mr. McGuirk.

VOTE: For 5, Oppo 0

MOTION PASSES.
PETITION POSTPONED.

47-06 The petition of Ann Carnaby for property located at 54 Tide Mill Road seeking relief from Articles 4.2 and 4.3 to create one additional building lot at 54 Tide Mill Road, where the new lot shall have frontage of less than 125 feet. This property is located at Map 231, Lot 6 in a RA zone.

Atty. Steve Ells and Ms. Ann Carnaby came to the table to speak on this petition.

Atty. Ells said Ms. Carnaby has lived at the property since 1977. It is an older home with 5.3 acres where 15,000 square feet is required and 315 feet of road frontage where 125 feet is required. We would like to subdivide the property in a manner that allows her to maintain her gardens to the east of the existing home. She will still have 3 ½ times the area required with the home. The new lot will have sufficient area and will accommodate the magic square of article 4, footnote 22. The lot however, will not meet the 125 foot frontage requirement. 105 feet of frontage is proposed. We are 20 feet short of the requirement. He then read through the 5 criteria as submitted with the petition.

Questions from the Board:

Mr. O'Brien asked if the new lot contained all wetlands to the left of the line drawn on the plan. Mr. Ells said he believes a large portion of the lot is wet. Ms. Carnaby said the original plan showed spots of wetland.

Mr. O'Brien asked if they could build on the easement area? Mr. Vic Lessard said no.

Mr. McGuirk doesn't think the petitioner needs relief from 4.3 lot width.

Comments from the Audience:

Mr. Dave Egonis, 48 Tide Mill Road, said he is west of the proposed lot. He's been there for 18 years. The soils maps shows that area all wet. The 50 foot wetlands buffer goes right through the building envelope. The front, southwest corner, abutting him, is low and wet. In heavy rain it floods. He submitted pictures of the area near his driveway that holds water. He's concerned that if the land is filled it could affect his lot. The water could puddle onto his lot. He recommends the wetlands board look at this and the building inspector.

The Chairman explained that if the Board approves this subdivision, that doesn't make the lot buildable. That will be up to the Planning Board and wetlands boards.

Mr. Egonis is concerned that this plan doesn't exactly match the original Parker Survey plan. The building doesn't match either. In his opinion the house would have to be built at an angle. It would add to the congestion. This area is taxed as wetlands, 4.3 acres. His taxes are \$4800 and her taxes are \$5600 for 5 acres. This will affect his property value. His home will be less desirable if a building is squeezed in there.

Mr. Lessard said he's yet to see a house in Hampton devalued. Look at the cell tower, he said. Houses are still selling down there.

Mr. Egonis would prefer the new lot to be on the other side of the house.

Mr. O'Brien determined a 30' x 70' house could be built outside the buffer on the lot.

Mr. Egonis is also concerned that this new survey is 6-8' different from where he thought the lines should be.

Mr. Andy Hay, 51 Tide Mill Road, said he has the same concerns as Mr. Egonis. He's been there since 1983. It seems like they would be stuffing a house in there. The area is very wet. The wetland survey is from 1988, the soils have probably changed by now.

The Chairman reiterated that this Board will not be saying this lot is buildable if they approve it.

Mr. O'Brien said whether it's buildable or not is not part of the equation.

Mr. Ells said at the Planning Board hearing the engineers will have to survey the soils. Then if we need a variance we will have to come back here.

Mr. Hay asked if the Board is empowered to allow a lot with less than the required frontage? The Chairman said yes.

Discussion followed on the survey. Ms. Carnaby said Mr. Cote drew this plan from the Parker survey then did locate or set pins at the property to make sure the house is in the right place.

Mr. Hay said he questions the validity of the map.

The Chairman explained that a surveyors stamp is on there. That makes it valid. Mr. Cote is a reputable surveyor in town.

Terrance Kirby, 55 Tide Mill Road, asked the Board to clarify that there's no way of knowing where the house is going to be right now. It's all speculation.

The Chairman agreed. It may be buildable and may not, he said.

Mr. Kirby asked if allowing this will set a precedent?

The Chairman explained that the Board has allowed other lots with less frontage. Lots with 25' of frontage have been approved to allow only 1 house out back where there's a large lot.

Mr. Egonis reiterated his concern that this survey map is not right on.

Mr. Shaw explained how surveyors sometimes don't agree. We have to go by what's here. The plan says it was drawn from the Parker Map from 1988.

Mr. Ells added that the Parker Survey plan, under the notes, says it looked at 5 other plans.

The Chairman said we have to vote on what's presented.

Mr. McGuirk feels with a little creativity they could do without a variance from 4.2. They don't necessarily have to be here. This way is clearer and more distinct.

Back to the Board:

Mr. McGuirk MOVED to approve the petition as submitted, subject to approval of all and any necessary boards, SECONDED by Mr. Jack Lessard.

VOTE: For 4, Oppo 0, Abst 1(VL)

MOTION PASSES.
PETITION GRANTED.

Mr. Jack Lessard MOVED to adjourn the meeting at 9:37 p.m., seconded by Mr. Shaw.

VOTE: For 5, Oppo 0

MOTION PASSES.
MEETING ADJOURNED.

Respectfully submitted,

Angela L. Silva,
Recording Secretary