

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, NOVEMBER 16, 2006**

MEMBERS PRESENT: Robert Vic Lessard, Chairman
Tom McGuirk, Vice-Chairman
Bill O'Brien, Clerk
Jennifer Truesdale
Henry Stonie, Alternate

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

The Chairman called the meeting to order at 7:00 p.m. and lead the Pledge of Allegiance to the Flag. He then introduced the members of the Board.

60-06 The petition of Edward Ebinger for property located at 18 Island Path seeking relief from Articles 4.1, 4.1.1, 6.4.2, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to demolish 3 existing dwelling units in two buildings and replace with 3 dwelling units in 1 building. This property is located at Map 282, Lots 20 and 21 in a BS zone.

Clerk O'Brien reported that this petition has requested to be postponed to the January meeting.

Atty. Craig Solomon advised that this is to wait for engineering to be completed.

Mr. O'Brien MOVED to postpone petition #60-06 to the January meeting, SECONDED by Mr. McGuirk.

VOTE: 5 FOR, 0 OPPO

PETITION POSTPONED.

61-06 The Appeal of Administrative Decision by Walter J. Wyse and Andrew Guthrie for property located at 31-33 Ocean Boulevard appealing the decision of the Hampton Planning Board, September 6, 2006, ruling that the proposed condominium consists of motel rooms, not dwelling units. See Section 1.6 – Definitions; Article VIII. This property is located at Map 296, Lots 20, 32 and 33 in a BS zone.

Atty. Craig Solomon and the petitioners came to the table to speak on this petition.

Atty. Solomon explained that the Hampton Planning Board approved 31 condo/hotel units at this site. It has 150 front feet and is about 100 feet deep. In each unit, the proposal has living, sleeping, sanitary, and we think cooking facilities, he said. Each unit contains a kitchenette with a refrigerator, microwave, sink and cabinets. The Planning Board struggled with the definitions and finally approved the project with the condition that the units couldn't be someone's permanent residence. This skips the questions of a second residence, he said. The petitioners see this as a residential area. And if they're correct, this proposal doesn't meet the requirements of Article 8 and the parking requirements.

The Planning Board tried to decide what this animal was, he said. You can have a room in a motel that can meet Hampton's definition of a dwelling unit. RSA 676:14 trumps it, he said. Providing that whichever requirement has a greater restriction or higher standard will be used. The dwelling

unit requirements impose greater setbacks and more parking. The Planning Board minutes call it a condo-hotel. The preamble to Article 3 says if it's not specifically authorized, then it's prohibited.

He spoke to the Winnacunnet Road case he represented and said the decision on that said "you have to look at the intent". Mr. Solomon went on to say that there were discussions at the Planning Board meetings of other condo conversions. The distinction is if you have an existing motel, you can add kitchenettes. The structure exists. Where there is a new structure, you need to look at the proposal. On September 7th the Hampton Planning Board approved this proposal, with conditions.

Mr. Guthrie reported that Atty. Mark Gearreald said the standard had to be permanent residence. He disagrees.

Mr. Solomon said they are 500 square foot units, and Mr. Guthrie added there are some 2 bedroom units. Mr. Solomon said it's his understanding that if the Planning Board has determined that they are hotel rooms, not dwelling units, then the ZBA has the authority to determine if they are correct.

Ms. Truesdale asked for plans. Mr. Guthrie submitted some he had obtained.

Mr. Solomon explained that there are 31 units, 500 to 620 square feet each, and 34 parking spots.

Mr. McGuirk feels if there's over 329 square feet in the units, than 1.5 parking spaces are required per unit.

Mr. Lessard said people have lived in motel rooms year round, and didn't have kitchens.

Atty. Peter Saari, representing the developer, agrees with the size description.

Mr. Stonie feels a permanent residential unit would have factors that a motel wouldn't have. Also long term identification might be a lease instead of a week to week rental, post office delivery, name plates, register to vote, children enrolled in school, car registration.

Atty. Saari said a buyer can't live there permanently. There is to be a provision in the condo docs that this cannot be anyone's permanent residence. There's no mail boxes. One cannot register their car here. It could be rented out, or could be used weekends by the owner.

Mr. O'Brien asked if there's a state law defining transients. Mr. Saari said the NH Statutes talk about more than 90 days.

Atty. Solomon said the Hampton Police have always taken the position that if a tenant is there more than 90 days, they will not intervene.

Mr. Lessard asked if he could stay there for the summer, and go to Florida in the winter.

Atty. Saari agreed he could, as long as his residence isn't there. He added that they are all 1 bedroom units.

Keith Crowley, developer, said the plans Mr. Guthrie submitted are old. They are now all 1 bedroom units. You walk in to a studio with a kitchen area/living room area and then there is a separate bedroom. They are 520 to 640 square feet each.

Ms. Truesdale asked what cooking facilities are going to be there.

He answered sink, refrigerator, counter top, no stove, and a microwave.

Mr. O'Brien reported he went on-line and the Marion Webster definition of cooking as anything to heat. Micro heating uses microwaves to heat.

Mr. McGuirk said he had an apartment just like this. You could live there for ever and ever. Thy guy that lived down stairs, lived there for 12 years.

Mr. McGuirk feels if they are 520-620 square feet, then they need 47 parking spaces.

Mr. Schultz explained that the ordinance says that to be a dwelling unit, it must be at least 330 square feet, among the other requirements. If they are dwelling units, they need the 1.5 parking spaces per unit. If they are not determined to be dwelling units, then they don't need them.

Mr. McGuirk said he's looking at the 330, that's why the OC id 329.

Mr. Schultz said if you were going to design a multi-family then 330 square feet would be a requirement.

Mr. McGuirk said the Beachside Inn is residences, do they have stoves or microwaves.

Mr. Lessard said they have cooking.

Mr. Schultz explained that if you remodel existing motels to add kitchenettes, you are converting. He agrees we struggle with the ordinances and need clarifications sometimes.

Ms. Truesdale said her family owned units had a microwave, toaster and refrigerator. People could live there from Labor Day to spring.

Mr. McGuirk commented that the Green Briar contel units are year round.

Mr. Schultz explained that the Zoning Ordinance doesn't have a term "contel", but hotels and motels are allowed. And condo conversions are allowed.

Mr. McGuirk feels these others are pre-existing. This is new construction. It should follow the rules. If the units were under 329 s.f. there wouldn't be much this Board could do. But since they're over the 330 s.f., they need 47 parking spots.

Mr. Schultz explained then they'd also have to look at Article 8 and the 40 foot setbacks.

Atty. Solomon clarified that their argument is that hotel and motels are defined as transient in the ordinance and a dwelling unit is defined as providing living, sleeping, eating, cooking and sanitary provisions. The Planning Board thought it should be either/or. We're saying it can be both, but the more restrictive requirements are required.

Atty. Saari argued that at one time, 20 years ago, this could have been both. If something is under 330 square feet it cannot be a dwelling unit. There is no size limit for motel rooms. In 1991 motel was defined in the ordinance and hasn't changed. The definition of dwelling unit, however, has changed a lot. In 1986 it was no less than 200 square feet, for either permanent or transient living. In 2002 permanent provisions were added and the size limit is gone now. In the building codes R1 use groups, hotels and motels, are primarily transient in nature. R2 group is non transient and permanent in nature. The definition of cooking given by Mr. O'Brien was not a good one for cooking with a microwave. The Planning Board wrestled with how long people will be staying in these units. There's a problem with enforcement. We don't want people here for long periods of time.

Mr. Lessard asked if there's going to be a rental office. Mr. Saari said yes, on the first floor. He then distributed the definitions previously quoted in the Hampton Zoning Ordinance and the building codes.

Mr. McGuirk feels the "permanent provisions" in the definition is talking about the building, not the people.

Atty, Saari explained that his position is that this project is for transient occupancy. The sizes of these types of properties are getting larger.

Comments from the Audience:

June White, 8 River Avenue, passed out packets to the members containing information from the Planning Board meetings. She said in the packet are letters from the neighbors given to the Planning Board. Their biggest question was 'what is a contel?' She believes there should be no kitchen to cook, no cabinets, no sink, no refrigerator. The Planning Board couldn't move forward without a definition of a contel and then they approved it 2 meetings later. She thinks they made a mistake there. They didn't want to hold the owner up because they didn't have a definition of a contel, she thinks. She also spoke of the 3 foot height limit and the hedges, and sight problems.

John Christiansen, from the Island section, said his biggest problem is how to control the leasing. If the owner wants to maximize his profit, he not going to want to kick people out who are paying. Even if we catch them, there's no penalty. Boards also have a right to rescind these covenants.

Back to the Board:

Atty. Solomon argued that length of stay doesn't define dwelling unit. You can have a motel room that's also a dwelling unit.

Atty. Saari argued that if the Board took Mr. Solomon's interpretation to a conclusion you'd have to say every motel with a microwave is a dwelling unit, and will have to meet the 40 foot setbacks. And if your motel is 330 square feet then it's a dwelling unit.

Mr. Lessard spoke of being in the service and his residence being where his heart was.

Atty. Saari warned to Board to be careful not to step on the toes of the other Boards.

Mr. McGuirk said these units have 2 rooms. He doesn't see how we can decide without a definition. This is a gray area.

The Board discussed various approvals in the recent past. Microwave cooking being permanent or nonpermanent cooking facilities.

Ms. Truesdale agrees this could be both at the same time. She doesn't see a microwave as permanent cooking facilities. It does however meet every other item. There's no stove and no oven. In her line of work, this is not a permanent dwelling.

Mr. O'Brien agrees with Mr. McGuirk.

Mr. Stonie is bothered by the plethora of information from different angles. He feels there should be a conference with the Planning Board, Zoning Board and the Building Official to try to make some sense of this.

Mr. Lessard doesn't think you can get a motel without a microwave or coffeemaker. He also doesn't think this Board can decide this tonight.

Mr. Stonie MOVED to table this petition without prejudice until the January meeting, so the Planning and Zoning Boards can have a mutual conference on the material, SECONDED by Mr. O'Brien.

VOTE: 5 FOR, 0 OPPO

PETITION TABLED.

The Board discussed Mr. McGuirk and Ms. Truesdale setting up a meeting with the Planning Board. The Chairman will attend if he is able.

62-06 The petition of John Ragonese for property located at 5 Sunsurf Avenue seeking relief from Article 1.3 (as to 4.5.2) to construct a shed dormer on the existing house, the drip edge of which will be three (3) feet closer to the sideline than the ordinance allows. This property is located at Map 256, Lot 14 in a RA zone.

Mr. Ragonese and Atty. Peter Saari came to the table to speak on the petition.

Atty. Saari said Mr. Ragonese has owned the property since 1991. It was too close to the road. He had a variance to expand and put on a dormer. He moved to property back 20 feet and tore down a rear porch to make that happen. Then he added dormers legally. The shed dormer was never built. The building permit expired and now the setbacks have changed from 7 feet to 10 feet.

Mr. Lessard remembered ledge in the cellar.

Atty. Saari went on to explain that he wants to blow out a section of the roof and build a dormer. It will be the exact same distance from the lot line as the first floor. Seven feet to the drip edge and 8 feet to the wall. He can't go out, he needs to go up. This will not have any effect on anyone. He then read through the 5 criteria as submitted with the petition. He also submitted a letter from an abutter, The Altermans of 4 Sunsurf Avenue, supporting the petition.

Questions from the Board:

Mr. Lessard feels this will add value to the neighborhood because it will improve his lot. And it will not block anybody's view.

Mr. Stonie sees 1 problem. He will be looking directly out to the abutter's windows.

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

VOTE: 5 FOR, 0 OPPO

PETITION GRANTED.

53-06 The continued petition of Sheila Marlowe for property located at 10 Thorwald Avenue seeking relief from Article 4.1.1 to build a single family house on the lot where the lot does not conform to the lot area per dwelling unit requirement for this zone. This property is located at Map 223, Lot 110 in a RB zone.

Ms. Marlowe came to the table to speak on this petition. She said she's asking to have the same variance reinstated. No material changes have been made. She has spoken with the Building Inspector about redesigning her proposal and Real Estate brokers and they advised her to go with

the 2 stories over a garage. She then read through the 5 criteria as submitted with her petition. She said it's her fault she let the variance expire.

Questions from the Board:

Mr. Stonie feels the larger buildings in the neighborhood are on larger lots. He feels this is not consistent with the neighborhood.

Mr. McGuirk feels she can go up to 35 feet and so can't the neighbors. This is not inconsistent with what the neighbors could do with their properties. He feels the Board can't really stop her from building. She meets every other requirement.

Mr. O'Brien feels she's only asking for 4.1.1. Based on the other petition from the October meeting, he feels she doesn't even need a plan.

Comments from the Audience: None.

Back to the Board:

Mr. Lessard feels putting the garage under would make the neighborhood look cleaner.

Mr. McGuirk feels where she meets the setbacks there will be more open space.

The Chairman polled the Board on their agreement with the 5 criteria. They all agreed.

Mr. Stonie MOVED to grant the petition, SECONDED by Mr. McGuirk.

VOTE: 5 FOR, 0 OPPO

PETITION GRANTED.

64-06 The petition of Robert & Mary Culliford for property located at 181 Kings Highway seeking relief from Articles 1.3, 4.5.1 and 4.5.3 to remove existing single family home and foundation and replace with new single family home. New house to be moved on lot to meet setbacks as required by the Deed restrictions. This property is located at Map 168, Lot 21 in a RA zone.

Contractor William Ritchie came to the table to speak on this petition. He said he's asking for relief to take down the existing home and build a new one. They do have a 7 foot deed restriction. He would like to have a 10 foot setback on the side. He needs relief from the front, side and rear setbacks. He explained that the owner died in 1995 and the deed was never recorded. It will be recorded within the week.

Questions from the Board:

In answer to questions, Mr. Ritchie explained that the new house will be 10 feet from the drip edge on the north side, 7 foot 8 inches on the east side and the front will be 9 foot 6 inches.

Comments from the Audience: None.

Back to the Board:

Mr. Ritchie read through the 5 criteria as submitted with the petition.

The Chairman polled the Board on their agreement with the 5 criteria. They all agreed.

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

VOTE: 5 FOR, 0 OPPO

PETITION GRANTED.

63-06 The petition of Frank & Sabrina Seta for property located at 8 Piper Lane seeking relief from Article IV, Section 4.2 (frontage) and Section 4.3 to subdivide existing lot of approximately 118,000 sq. ft. into two residential lots. Also, to seek an equitable waiver of dimensional requirement as existing garage is 9.8' from sideline where 15' is required. This property is located at Map 43, Lot 46 and Map 57, Lot 46.1 in a RA zone.

Frank & Sabrina Seta, Atty. Steve Ells and Surveyor Ernie Cote came to the table to speak on this petition.

Mr. Ells explained that the lot has a single family home with an attached garage. The lot is an L-shaped configuration containing 118,000 square feet where 15,000 square feet is required. The home is accessed over Piper Lane, which is not an accepted public street. The proposed lot will have frontage on Reddington Landing and will have the full 125 feet of frontage and about 3 times the minimum lot area required. This will leave the existing house lot with plenty of area, but no frontage on an existing street. During the survey work it was discovered that the garage is 9'8" from the property line, where 15 feet is required. This property was purchased like this. The owner did not construct the home or the garage. He then read through the 5 criteria as submitted with the petition. New plans were distributed showing the existing house lot with more land than originally proposed.

The Board asked about the position of the taxiway easement. The new plan didn't match the subdivision plan. Mr. Ells said that can be corrected before going to the Planning Board.

Mr. Ells said he feels this is a reasonable request. There is a height restriction on all these lots and they will adhere to this.

Questions from the Board:

Mr. Stonie asked if Piper Lane has any town services. The Seta's said no. They have to bring their rubbish to Reddington Landing and the town doesn't plow the street.

Comments from the Audience:

Mike Hart, owner of Hampton Airfield, said he bought the airfield in 1975. The Town did not have zoning regulations to cover the airport. The height restriction off the end of the runway were developed to provide safety zones. Without protection like this, many airports have closed down because of encroaching houses. The center of the runway is in line with lots 6 and 5 on the plan. This lot is one of them. These lots were layed out to keep the center open. The houses were to be built on the sides as they are now. Initially this neighborhood was approved for 71 condo units at the end of Reddington Landing and 7 house lots. The road was named Reddington Landing after the first pilot to land on Hampton Beach. He's very adamant about protecting this. He spends a lot on money protecting his airport. This is very important. He described the building height requirement to be 20 feet at Reddington Landing. If you move in 50 feet, you can only have 15 feet, he said. There is also a 20' drainage easement. This puts the building back at least 30 feet. He's been mowing this property ever since he's owned the airport, he said. This is an overrun for the airport runway. He paid for the easement by virtue of land giveaway. If he had known the Town would've allowed any of these lots to be split he wouldn't have done it. He wasn't notified of the

other splits because he's not an abutter. He hasn't had any problems so far, but he doesn't want these two center lots to be built on.

The Chairman said he was glad he came forward tonight.

Mr. Hart went on to say this is a safety issue. He can't even imagine a house there, even if it meets the height requirement. Also the water pitches down the runway to the drainage easement.

Michael Pouliot, Aviation Planner for the NH Department of Transportation, Bureau of Aeronautics, said the warranty deed these property owners have does have these covenants. Any structure would be a safety hazard to aircraft and people who live there. Runway safety rules required 240 feet outside the end of the runway. There is a runway protection zone that begins 200 feet from the end of a runway and extends 250 feet wide to 450 feet wide. Land use is prohibited for residential and places of public assembly. He would submit a letter to the Board stating his recommendations on the matter if they'd like.

The Chairman said he is on record, but a follow up letter would be appreciated. He also said he wishes the Board knew about this at the time of approving the other lot splits.

Mr. O'Brien asked if the other center lot ever tried to subdivide. The owners were present and said no. They knew of the restrictions.

Mrs. Seta said the house would be to the left of the field, where the woods are now. It wouldn't be in the way of the field or flight path.

Atty. Ells agreed there's not question the deeds are subject to covenants. But we can meet those covenants.

Mr. McGuirk said even if we approve this lot, that doesn't mean they can get a building permit. They have covenants to meet.

Mr. Schultz reported that the subdivision of the other lots have taken place over the last 7 years, since he's been here.

Mr. Ells argued that the easement figures he understands to mean above sea level and the lot slopes downward to Reddington Landing.

Bart _____, 120 Kings Hwy #5, said he's a commercial pilot. He opposed to this because of safety. If you're driving south, leaving the airport, and there are kids playing there this would be a distraction.

Scott Aversano, said he runs the Airfield Café, he's concerned for his business' sake. If there were an accident at this site there would be a negative impact on the abutters. There is also an incredible amount of water in the neighborhood. His house was sunk due to the height requirement. There is a lot of water during the floods we've had lately.

Dick Cumming, NH resident, said he's been flying for 25 years out of the Hampton Airport. In the best interest of safety he recommends the Board doesn't approve this.

Tom Mason, Piper Lane, said his taxiway easement goes through the Seta property. He plows the road. He's been flying for 31 years. This is a very busy airport. This would make an unsafe situation. He sees it as they are trying to capitalize. It's nothing personal. He strongly opposes any development on lots 5 or 6.

Mr. Schultz reported that lots 3, 4 and 7 have had structures built. He asked Mr. Hart if they have negatively impacted the runway or over run. Mr. Hart said he hasn't had any problem as yet.

Mr. Pouliot said that a sort of trapezoid would be drawn at the end of the runway starting at 120 feet wide going out to 240 feet wide.

Mr. O'Brien asked Mr. Schultz if he was familiar with the contour chart. He said he was.

Mr. Ells argued that they are aware of these requirements. But he's saying they can be met. We are aware that we have to build a one-story home here.

Back to the Board:

Mr. McGuirk said he's never been so mad over a petition as this one. Mr. Hart owned lots 5 and 6 and sold them. He sold his safety zone. He didn't protect himself with any easement on the maps or plans.

Mr. Seta said they offered to split the land and sell it to Mr. Hart and he said "what good is it to me".

Mr. Lessard said they bought the property as one lot. They do have every right in the world to come here and ask to split the lot. Easements don't always show on the map. There's one on his property that doesn't show.

Mr. McGuirk said in his mind they've met all the criteria.

Mr. Stonie feels if the petitioner knew about the covenants at the time of purchase, it's a self induced hardship.

Mr. Ells agrees the property is subject to covenants. We can build a structure and comply with the covenants. We don't want to live with restrictions that don't exist. He could've drawn an easement and said don't building anything there, he didn't.

Mr. Lessard is concerned the other lot has no frontage on an accepted street. He then polled the Board of their acceptance of the 5 criteria. Ms. Truesdale -no. Mr. O'Brien - no because of safety and he is consistently against frontage variances. Mr. McGuirk -yes. Mr. Lessard -no.

Ms. Truesdale MOVED to deny the petition, SECONDED by Mr. O'Brien.

VOTE: 4 FOR, 1 OPPO(MCG)

PETITION DENIED.

BUSINESS MEETING:

Mr. McGuirk MOVED to accept the minutes of October 19, 2006, Mr. O'Brien SECONDED.

VOTE: 3 FOR, 2 ABST

MOTION PASSES.

Mr. Stonie MOVED to adjourn the meeting at 10:38 , SECONDED by Mr. O'Brien.

VOTE: 5 FOR, 0 OPPO

MOTION PASSES.
MEETING ADJOURNED.

Respectfully submitted,
Angela L. Silva, Recording Secretary