

**HAMPTON ZONING BOARD OF ADJUSTMENT
AMENDED MINUTES
Thursday, October 18, 2007**

Members Present:

Tom McGuirk, Chairman
Jack Lessard
Vic Lessard
Bill O'Brien
Bryan Provencal

Others Present:

Kevin Schultz, Building Inspector
Joan Rice, Recording Secretary

Chairman McGuirk called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman McGuirk introduced the members of the Board.

Chairman McGuirk announced that Petition 50-07 has been withdrawn.

49-07 The continued petition of Robert & Robin Baskerville for property located at 743 Exeter Road seeking relief from Articles 3.22, 3.26a and 3.9 to use existing house as a professional office, to add the required parking and possibly provide access to an abutting lot. This property is located at Map 6, Lot 16 in a RAA zone.

Robert Baskerville and Attorney Craig Salomon came forward.

Attorney Salomon said that they had submitted a letter to withdraw from the petition the seeking of relief from Article 3.9. They are no longer looking at having an access route through this property for use as a possible hotel driveway.

Mr. O'Brien asked for how long this would be withdrawn, i.e., could it be brought back in 6 months.

Mr. Schultz explained that if it stayed on the petition and the petition was denied it could not be brought back for consideration.

Mr. Vic Lessard said he would like to hear the petition before allowing the withdrawal of Article 3.9.

Mr. Baskerville explained his frustration in not being able to sell this property. He said he felt the presence of the restaurant next door contributed to this problem. At one point

there was the possibility of a hotel abutting the property. This made the problem worse.

Then the application for the hotel was withdrawn. He said he was given no indication of what was planned for the future and since the only agreement he had with the developer was contingent on the approval of that variance, his agreement with the developer was terminated.

Attorney Salomon went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

Mr. Vic Lessard said that it concerned him that so many people have fought to keep this area residential. Also, it would be hard to demolish this residence because of its historical value. Mr. Vic Lessard then discussed his concerns with the soil composition (clay), sewerage and well water for this RAA area.

Mr. O'Brien said if you consider only Hampton, the only commercial building is across the street and it has existed prior to the zoning ordinance. The B&B located next door is a special exception and that a professional building is a prohibited use in this zone. We can't control what happens in Exeter.

Chairman McGuirk said he agreed with Mr. O'Brien. He said this Board has no jurisdiction in Exeter. Therefore the restaurant doesn't fall under the Board's jurisdiction.

Comments from the Audience

Chet Riley, 641 Exeter Road, came forward. He read his letter to the Board expressing his reasons for opposing this petition. He said granting this request would be contrary to the public interest and that there is no use hardship associated with this parcel. A change to commercial is contrary to the spirit of the ordinance.

Regarding the withdrawal of request for relief from Article 3.9, Mr. Riley said that there still is no guarantee that the development of a hotel will not be attempted in the future. Mr. Riley said he would ask that the petition be denied even as amended.

John Warner of Exeter came forward. He said he would disagree that the restaurant is an impediment. However, when these other commercial proposals were brought up an offer on his home was withdrawn.

David Lang, Sr., 732 Exeter Road, came forward. He said he sympathizes with Mr. Baskerville, but this is a business decision and he agrees with Mr. Riley.

At that time members of the audience were polled as to agreement with Mr. Riley. Many raised their hands. The audience was polled as to how many had sent letters opposing this petition. Again, many raised their hands.

Jeffrey DeNarco , 744 Exeter Road, came forward. He said he was strongly opposed to this petition.

Edward Evergreen came forward. He said this is no hardship under the law and that there should be like uses in like neighborhoods.

Rick Anderson, 1 Brooks Lane, came forward and said he was also in opposition.

Jackie Thorpe, 740 Exeter Road, came forward. He said he did not believe the five criteria can be satisfied. It is contrary to the public interest. He expressed concern that with the school bus across the street, increased traffic to a professional building could be dangerous.

Back to the Board

Moved by Mr. Jack Lessard, seconded by Mr. Vic Lessard, to deny Petition 49-07.

Chairman McGuirk asked the Board if the five criteria had been met. All members agreed that they had not.

VOTE: 5-0-0. Motion passed.

At this time Chairman McGuirk read Mr. Ken Sakurai's letter requesting withdrawal of Petition 50-07.

51-07 The petition of Tarek Latif for property located at 17 Whitten Street, Unit 4, Seeking relief from Articles 1.3 and 8.2.3 to raze and remove existing seasonal single story cottage and replace with new year round 2-story cottage with a balcony using the existing cottage footprint with the exception of the balcony and requesting year round usage be approved pending bringing cottage to required codes. This property is located at Map 295, Lot 41 in a BS zone.

Mr. Tarek Latif came forward. He said that he had submitted a revised parking plan. Mr. Latif went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

Mr. O'Brien asked if the Condo Associations intent was that all units look alike. Mr. Latif said that was their intent.

Mr. O'Brien said that it would not be possible since there would be no access to the back Northeast area. He said he would want to see a plan that lays everything out dimensionally.

Mr. Latif said that to provide sufficient access he would keep the first floor dimensions as they are today and put a balcony on the second floor. Mr. O'Brien stated that an alternative would be to chip off the first floor in the northwest corner.

Mr. Vic Lessard said it is time to do this upgrade.

Comments from the Audience

There were no comments from the audience.

Back to the Board

Mr. Schultz said that if the Board approves this variance, building plans and the site plan will have to be modified showing clip on the first floor.

Moved by Mr. O'Brien, seconded by Mr. Provencal, to grant Petition 51-07 with the condition that the northwest corner be angled to provide access to parking (first floor only).

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 5-0-0. Motion passed.

52-07 The petition of Bernard Fuchs, Jr. for property located at 654 Lafayette Road seeking relief from Articles 1.3, 4.5.1, 4.5.2, and 8.2.3 to add a roof system over the existing entry which does not meet the multi-family setback requirements. This property is located at Map 126, Lot 19 in a B zone.

Mr. Bernard Fuchs, Jr. came forward. He said his reason for adding the roof system over the existing entry is to better deal with adverse weather conditions, and prevent accidents such as people slipping, etc.

Mr. Fuchs went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the audience.

Back to the Board

Moved by Mr. Vic Lessard, seconded by Mr. Provencal, to grant Petition 52-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 5-0-0. Motion passed.

53-07 The petition of M&F Hampton, LLC for property located at 72 Kings Highway seeking relief from Articles 3.26a and 6.3.9 to construct an off-street parking area adjacent to the existing bagel shop keeping the existing gravel surface with excess spaces for use by the adjacent Hampton Beach Trailer Park. This property is located at Map 210, Lot 4 in a RB zone.

The representatives of M&F Hampton, LLC and Attorney Peter Saari of Casassa & Ryan came forward. The petitioner stated that the original reason they were here is because of the parking in the Hampton Beach Trailer Park. They considered making a portion of the lot a commercial parking lot. He said that they have now decided to no longer pursue that use by the trailer park. It makes more sense to have extra space for the bagel shop rather than renting it out.

The petitioner went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

Mr. Schultz said there will be no designated parking except for the upstairs apartment and the house.

Mr. Schultz asked if the lot would be more accessible for customers. The petitioner replied that it would.

Comments from the Audience

Randy Radkay came forward. He said that he is trying to develop property abutting this property and thinks this is a really good proposal. Adding 17 spaces will be very helpful. He said he wanted this to be a restricted use.

Tom Woods, 7 8th Street, came forward. He said this is a great idea. However he would prefer flower pots in front rather than tables to avoid people loitering.

Back to the Board

Moved by Mr. Vic Lessard, seconded by Mr. Jack Lessard, to grant Petition 53-07 with the stipulation that Article 6.3.9 is denied and that Article 3.26a would be allowed for current restaurant parking use only (not as a commercial parking lot) and that the front of the building cannot be used for parking. A method to obstruct straight in parking (e.g., flower pots) would be implemented since the building is closer than 18 feet to the property line.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 5-0-0. Motion passed.

54-07 The petition of Rickey & Barbara Blais for property located at 4 Atlantic Avenue seeking relief from Articles 4.1.1, 6.3.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4 and 8.2.6 to completely demolish both existing buildings containing 3 dwelling units in total and replace with a new single 3-unit building where there is less than the required lot/dwelling unit, 3 parking spaces are within a garage and 3 immediately in front of those spaces and the multi-family requirements are not met. This property is located at Map 296, Lot 36 in a RB zone.

Rickey Blais and Attorney Peter Saari of Casassa & Ryan came forward. Attorney Saari went through the five criteria and said he felt the criteria had been met.

Questions from the Board

Chairman McGuirk said Article 8.2.1 is not required in the Precinct District.

Mr. O'Brien asked why relief from Article 6.3.1 is needed. Chairman McGuirk replied it because of stacked parking.

Mr. Schultz said that the building does meet all underlying setback requirements. He said the building will also be sprinklered.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. O'Brien said his concern was the running of the elevator into the garage since it would obstruct a parking space and suggested that the petitioner might go to three bedrooms on the first floor because of that.

Chairman McGuirk said he thought it was an over intensification of the property.

Mr. Provencal said he disagreed.

Chairman McGuirk said there are big beautiful single family homes a block over. This is not a two family, it is a multi-family.

Mr. O'Brien said he was concerned about the parking issue with so many bedrooms.

Moved by Mr. Provencal, seconded by Mr. Jack Lessard, to grant Petition 54-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. Mr. Vic Lessard, Mr. Jack Lessard and Mr. Provencal said the criteria had been met. Chairman McGuirk and Mr. O'Brien said it had not.

VOTE: 3-2 (McGuirk, O'Brien) – 0. Motion passed.

55-07 The petition of Thomas Moulton, through Katie Keefe, for property located at 9 Ann's Lane seeking relief from Article 3.25d to allow daytime care and grooming of dogs in the business portion of the lot, where some food may be made available in compliance with the Town of Hampton Animal Control Ordinance and other applicable regulations. This property is located at Map 126, Lot 16 in a B/RA zone.

Attorney Peter Saari came forward. He said he was representing Thomas Moulton. Attorney Saari introduced Amanda Banks. He said Ms. Banks is the named applicant replacing Katie Keefe.

Attorney Saari said that doggie daycare has become essential. He said that the ordinance does allow dog grooming, but not boarding. In the proposed daycare, dogs would not get meals only treats.

Attorney Saari went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

Mr. Jack Lessard read a letter from one of the abutters to this property. There was concern about operating hours, noise and animal waste.

Ms. Banks said a certain amount of noise is unavoidable, but dogs will be screened for acceptable behavior. A service will pick up waste twice a week. Hours would be 6:00 a.m. to 7:00 p.m. with the retail store remaining open until 8:00 p.m. Operations will be Monday through Friday.

Mr. Provencal asked if any dogs would be left overnight. Ms. Banks said no.

Comments from the Audience

There were no comments from the audience.

Back to the Board

Moved by Mr. Provencal, seconded by Chairman McGuirk, to grant Petition 55-07 with the stipulation that there be no overnight boarding.

At this time, Chairman McGuirk passed the gavel to Mr. O'Brien.

Chairman O'Brien polled the Board on their acceptance of the five criteria. Mr. Provencal and Mr. McGuirk agreed that the criteria had been met. Mr. Jack Lessard said it had not. Mr. Vic Lessard and Mr. O'Brien abstained.

VOTE: 2-1 (J. Lessard) – 2 (V. Lessard, O'Brien). Motion denied.

Moved by Mr. Vic Lessard, seconded by Mr. McGuirk, to reconsider on Petition 55-07.

VOTE: 3-1 (J. Lessard) – 1 (O’Brien). Motion passed.

Moved by Mr. Vic Lessard, seconded by Mr. Jack Lessard, to have petitioner withdraw without prejudice.

VOTE: 5-0-0. Motion passed.

Moved by Mr. Provencal, seconded by Chairman McGuirk, to conclude the petition portion of the meeting. The motion passed by unanimous vote.

The petition portion of the meeting was adjourned at 10:30 p.m.

Business Session

Chairman McGuirk called the Business Session to order at 10:30 p.m.

Motion for Rehearing re Petition 41-07 – 430 High Street

The petition for rehearing was discussed in detail by the Board.

Moved by Mr. O’Brien, seconded by Mr. Jack Lessard, to deny the request for rehearing on the basis that the attachment is a duplicated of the petition submitted last month and it fails to address allowing offsite parking greater than 99 parking spaces.

VOTE: 5-0-0. Motion passed.

Motion for Rehearing re Petition 44-07 – 8 River Avenue

The petition for rehearing was discussed in detail by the Board.

Moved by Mr. O’Brien, seconded by Mr. Provencal, to deny the request for rehearing on the basis there are numerous mis-statements in the petition and the fact that this Board has no jurisdiction under RSA 674:33. On the bottom of page 416 and the top of page 417 of the RSA book it states that the Zoning Board has no jurisdiction to review an order of the Board of Selectman. The Board of Selectmen has ordered Kevin Schultz, Building Inspector, to enforce deed restrictions.

VOTE: 5-0-0. Motion passed.

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Attorney Stephen Ells of Holmes & Ells came forward. He said that he wanted to make sure that the sense of the variance previously granted for petition 13-07 was not altered. The house is smaller in the new plan. All changes were made at the request of the Conservation Commission.

Moved by Mr. Provencal, seconded by Mr. Vic Lessard, to approve the new plan.

VOTE: 5-0-0. Motion passed.

The Business Session was adjourned at 10:50 p.m.

Respectfully submitted,

Joan Rice
Secretary