

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
Thursday, June 21, 2007**

Members Present:

Tom McGuirk, Chairman
Vic Lessard
Bill O'Brien
Bryan Provencal
Henry Stonie (Alternate)

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.

68-04 The rehearing of the petition of KMJ Realty Trust, Pamela Nyhan Trustee for property located at 430 High Street seeking relief from Article III Use Regulations – not an enumerated use; Articles 6.1, 6.2, 6.3.1, 6.3.5, 6.3.9, 6.4.3, Articles 1.3 and 1.6 Definition of Parking Space to continue to use the premises for “functions” including, without limitation, wedding receptions, showers, retirement, anniversary and engagement parties. This property is located at Map 166, Lot 7 in a RB zone.

Stephen Ells, of Holmes & Ells, said he was appearing on behalf of Pamela Nyhan, Trustee, and KMG Realty Trust, and the applicant, Mr. John Nyhan. Mr. Ells said the Nyhans purchased the Victoria Inn in the fall of 2002. They were informed by the Town that the property had never received a use variance which would allow functions. The Nyhans immediately applied to this Board for a variance to allow them to continue and this Board, in August of 2004, granted the requested variances. That variance was appealed by an abutter and a decision of the Superior Court remanded the matter to the Zoning Board for a new decision. The Court ordered that the Zoning Board was not to consider the fact that the property has been used as a function provider. The initial variances were granted in part for off-site parking at 432 High Street. This property is immediately to the east and has five parking spaces. That property was sold last week and Mr. Ells said he did not believe the new owners would accept having those spaces used for spill-over parking.

Mr. Ells said he was submitting a revised parking plan adding two spaces at the Victoria Inn property and eliminating the five spaces at 432 High Street. Mr. Ells said he believed the petition needed to be presented again in a modified form to comply with the Court's directive. Mr. Ells went through the five criteria as presented in the petition.

Questions from the Board

Mr. Lessard asked if the five criteria for the new petition are in writing. Mr. Ells said they were not, but that he would present a typed copy tomorrow.

Comments from the Audience

Mr. F.X. Bruton, attorney for the abutter, said he agreed that this is a rehearing. He said all of the elements are in question, so he would ask that there be a new application.

Back to the Board

Mr. O'Brien stated that he thought there should be a new hearing duly noticed with new documentation.

Moved by Mr. O'Brien, seconded by Mr. Lessard, that the applicant submit a new petition for relief and the current list of abutters are to be notified.

VOTE: 5-0

24-07 The Petition of the Estate of Raymond & Marie Gordon, through option holder North Beach Investments Inc. for property located at 76 Kings Highway seeking relief from Article 4.5.1 to place a structure at 10' off the front lot line where 20' is required. This property is located at Map 196, Lot 25 and 14 in a RB zone.

Mr. Lessard stepped down from the Board for this petition. The petitioners agreed to a 4-member Board.

Mr. Stephen Ells, of Holmes and Ells, said the land in question is two lots. This land has been approved by the Planning Board for six cottages and 10 on-site parking spaces. These are adjacent and perpendicular to King's Highway. The abutters have appealed to Superior Court and for an administrative appeal before this Board. The applicant has come up with an alternate parking plan. Instead of perpendicular parking to King's Highway, he is proposing bringing the parking to the north side of the property. They will then be able to preserve parallel parking. To be able to use this alternate parking

plan it is necessary to move the cottages closer to King's Highway at 10' rather than the 20' required. Mr. Ells went through the five criteria as presented in the petition.

Questions from the Board

None.

Comments from the Audience

Mr. Mike Finn, 80 King's Highway, asked if the parking was on lot 14 or lot 25. Mr. Ells replied that it is on lot 25.

Mr. Jeff Merrill, 8 7th Street, said that he opposed the variance. He said he did not believe that there was any hardship. There are other ways this site could be developed and a variance is not required. In order to get a variance, you must show special conditions that are unique. There are no unique conditions about this property. The applicant knew about the 20'. Since he knew, it is a self-created hardship. Granting the variance will not do substantial justice.

Mr. Tom Woods, 7 8th Street, said he agreed with Mr. Merrill. He said he felt it would be better to have fewer units. There is too much congestion.

Patty Haynes said she felt the plan was a good one. This is an upgrade for the neighborhood.

Mr. Randall Radky, North Beach Investments, said the abutters have not taken into consideration the surrounding areas. He could have put 10 units on this lot. He decided as a responsible developer that it would not look attractive. He re-worked the plan to 8 units and finally came up with 6 units. The total space is 1,800 sq. ft. for all six units.

Back to the Board

Mr. O'Brien asked if a waiver was needed for 234.b. The site plan was 3 cabins with a 50' buffer. Mr. Schultz said that they had received a waiver from the Planning and Conservation Boards. Mr. O'Brien said they should have obtained a variance first. Mr. Schultz agreed that this should have been done.

Chairman McGuirk said that he felt this matter should be brought to Town Counsel.

Mr. Stonie said that this is a mutual, cooperative process. He would suggest that this be tabled and the applicant could come in again.

Mr. Ells said he would like to go ahead with the variance they had come here for and if there is a need for a variance for the other item (50'), they could come back.

Mr. O'Brien said he would prefer to vote on the total issue at one time.

Moved by Mr. O'Brien, seconded by Mr. Stonie, that this hearing be continued next month after receiving input from Town Counsel.

VOTE: 3-1 (Provencal). Motion to Continue granted.

26-07 The petition of Vincent & Jeanne Foley for property located at 43 Ocean Drive seeking relief from Articles 1.3 and 4.5.2 to raze existing home without required side yard set back of deck and construct new home without required side yard set back of deck. This property is located at Map 305, Lot 47 in a RA zone.

Russell Mailloux, representing Vincent and Jeanne Foley, came forward. He said this petition is for razing an existing structure and building a new one. The issue for the applicant is the deck which extends beyond the required side yard setback. The plan is to construct a new deck hoping to preserve the right side extension. Mr. Mailloux went through the five criteria as presented in the petition.

Questions from the Board

Mr. O'Brien asked Mr. Mailloux if he was the contractor and if the house would be built according to his elevation plan. Mr. Mailloux replied that he was the contractor and it would be built according to the elevation plan.

Comments from the Audience

Paul and Diane Tower, 390 Ocean Drive, came forward. Mr. Tower said that when he asked for a variance he was required to build conforming decks. He said he only would ask that the Board be consistent in its decisions.

Back to the Board

Mr. Lessard **moved**, seconded by Mr. Provencal, to approve the petition. Chairman McGuirk polled the Board regarding the five criteria. The Board agreed that the five criteria had been met.

Mr. O'Brien said he did not agree with word "preserve" in criteria #1. He felt the wording should be eliminated after the word "requirements".

Mr. Lessard **moved**, seconded by Mr. Provencal, to grant the motion subject to the changing of the wording in criteria #1 where all language would be eliminated after the word "requirements".

VOTE: 5-0-0. Motion granted.

27-07 The petition of Jacquelyn Garrity & Michael McMillan seeking an Appeal of Administrative Decision of Planning Board for property located at 76 Kings Highway. This property is located at 76 Kings Highway. This property is located at Map 196, Lot 25 in a RB zone.

Mr. Jeff Merrill said they would like to appeal two decisions of the Planning Board. They contend the Planning Board made an error when it determined the driveway provided sufficient ingress and egress. Mr. Merrill said this is not true. He said the site is dangerous. He does not believe this plan conforms to zoning ordinances. The second error made by the Planning Board was when they said lots 14 and 25 should be separate lots. Mr. Merrill said he believed the two lots (14 and 25) should be combined into one lot .

Questions from the Board

Mr. Lessard said that circumstances could cause the lots, if merged, to be separated again. Chairman McGuirk said that the Town should have assembled the two lots together. This should have been done automatically.

Mr. Schultz said this is good practice but not always done. He said it was his understanding that the Town of Hampton has not done this.

Mr. Lessard said he would be against merging the lots.

Comments from the Audience

Mr. Merrill said that he would still contend that the Planning Board's approval should be reversed and the lots merged with the owner submitting a new plan that complies with zoning ordinances.

Sheila Walsoski came forward. She said the applicant has been paying taxes. He has every right to do this. You only put lots together when it not meeting zoning. He has a right to keep the lots separate.

Stephen Ells, Holmes & Ells, said he did not believe this matter should be before this Board on administrative appeal. The Planning Board approved the plan. If the abutters are unhappy they should go to Superior Court. Mr. Ells said he does not think this is an error by the Planning Board. They were guided by the Chief of Police and the Town's Highway Safety Committee.

Back to the Board

Mr. Stonie said he felt the Planning Board was within its parameters in handling these issues.

Moved by Mr. Lessard, seconded by Mr. Stonie, to not remand this petition back to the Planning Board.

VOTE: 4-0-1 (O'Brien). Motion to appeal denied.

BUSINESS SESSION

Chairman McGuirk said there was a Motion for Rehearing – 8 River Avenue – Petition #17-07

17-07 The petition of June White for property located t 8 River Avenue seeking relief from Articles 1.3, 4.5.1, 4.5.2 and 4.5.3 to add bedrooms to third floor, 3 bedrooms 1 bath, which were removed from first and second levels, currently only a sleeping loft exists on third level. To remain in current footprint of building outside 7 ft. setback. This property is located at Map 296, Lot 70 in a RB zone.

Chairman McGuirk said it was opinion that the Board should not be referring to the deed restrictions at all. The Town Attorney said this was out of the purvue of this Board and that the Board will be granting variances according to the five criteria, but that does not release the applicant from deed restrictions. The Board has the obligation to make the applicant aware of any deed restrictions. Any variances granted do not supersede deed restrictions.

Mr. O'Brien **moved**, seconded by Mr. Provencal, to have a rehearing on Petition 17-07.

VOTE: 4-0-1 (Stonie). Motion to rehear was granted.

Adoption of Minutes – April 19, 2007

The Minutes were adopted with the following corrections:

1. Page 1 - Under Members Present, Mr. Provencal's first name should be spelled "Bryan".
2. Page 3, 2nd paragraph, last sentence – the word "first" should be replaced with "second".
3. Page 3, 3rd paragraph – after the word "added", the words "on the 3rd floor" Should be inserted.
4. Page 5, last vote – "McGuirk, Truesdale" inserted after "2".

Adoption of Minutes – May 17, 2007

The Minutes were adopted with the following corrections:

1. Page 4, last paragraph, last line - The words "began to" should be inserted after "McGuirk".
2. Page 5, top of page – after "criteria" insert "Attorney Nevins interrupted and asked that they be allowed to withdraw the petition".
3. Page 5, 2nd paragraph, line5 – after "property" insert "and modifying" and After "structure" insert prior to the stop work order, the building"
4. Page 5, 3rd paragraph – after the word "hear" insert "the related petition".
5. Page 6, last sentence – Begin sentence with "Returning to petition 20-07,"
6. Page 8, last sentence – Should read "Mr. O'Brien requests that the Board discuss a new procedure to obtain ZBA approval when raising a house to put in a new foundation".

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Mr. Schultz said he would like to request Tony Fallon to come to the business session at next month's meeting for feedback.

Adjournment

There being no further business to come before the Board, Mr. O'Brien **moved**, seconded by Mr. Provencal, that the meeting be adjourned.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Joan Rice
Recording Secretary