

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
September 17, 2009**

Members Present

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

Others Present

Kevin Schultz, Building Inspector

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

PETITION SESSION

22-09 The postponed petition of Dorothy Sheehan, thru Andrew & Meghan Thompson, for property located at 3 Tenth Street seeking relief from Articles 1.3 and 4.5.2 to replace existing foundation with two 3 foot extensions, one to the North and the other to South. This allows for a second and third floor to be added. This property is located at Map 197, Lot 28 in a RA zone.

Dorothy Sheehan and Andrew Thompson came forward.

Chairman O'Brien referred to this petition being postponed last month. He said that technically it was the Zoning Board's fault in not having the street address noted. However, the description presented by the applicants did not reflect what was intended in the petition.

Ms. Sheehan said they want to replace the existing foundation with two 3-foot extensions, one to the south and one to the north. She went through the five criteria and said she felt they had been met.

Questions from the Board

Chairman O'Brien said the applicants were going to raise the house and replace the existing foundation and the new foundation will be enlarged. Walls will be taken down on the north and south so there will be partial east and west walls. Also, a second and third story would be added. Mr. Thompson said this was correct.

Mr. Vic Lessard asked what exactly would be left. Mr. Schultz said they are keeping as much of the original as possible. The house will be set back onto the new foundation.

Chairman O'Brien asked if the floor plan was the same as submitted last month. Mr. Thompson replied that it was.

Chairman O'Brien said that if they went 10 feet back on the west side it would not be necessary to come before this Board. Mr. Schultz said that was correct. If anything, they would come before the Board under 1.3.

Chairman O'Brien asked if the shed could be reoriented to meet the setback. Mr. Thompson said it could.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Vic Lessard and seconded by Mr. McGuirk, to grant Petition 22-09 with the understanding that the shed must meet the 4 foot setbacks.

Mr. Schultz reminded the applicant that the shed has to meet the setbacks and distance separation requirement.

Chairman O'Brien asked the Board if the five criteria had been met. They agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

26-09 The petition of Pearly and Jane Denault for property located at 125 Kings Highway and 5 Thirteenth Street seeking relief from Articles 1.3, 4.1, 4.1.1, 6.2, 8.2.1, 8.2.3 and 8.2.6 to move the lot line between Lots 45 and 52, giving Lot 52 approximately 1190 more square feet, while reducing Lot 45 by approximately 1190 square feet. These properties are located at Map 183, Lots 45 and 52 in an RA zone.

At this time Chairman O'Brien stepped down, Mr. Provencal stepped up as Acting Chairman and Ed Pierre as primary alternate.

Pearly Denault and Peter Saari, Casassa & Ryan, stepped forward. Mr. Saari said what Mr. Denault now owns was originally three properties. There are two properties there now. One is a multi-family and the other is a single-family where Mr. Denault now lives. Mr. Denault wants to move the lot line. Now it runs through the steps of the building where Mr. Denault lives. He wants to avoid issues between his children in the future. There will be no effect on the neighborhood and this will increase parking. Mr. Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. McGuirk asked how many units were in the 13th Street property. Attorney Saari said there were four units. Mr. McGuirk asked why this could not be taken care of with an easement. Attorney Saari said this could cause arguments over time. Mr. McGuirk said he felt taking land from a multi-family property and giving it to a single-family property was not a good idea. Mr. Saari said the land that would be taken away is not being used right now. Mr. McGuirk said this could not be guaranteed in perpetuity.

Mr. McGuirk said that multi-family is not specified in the text. Attorney Saari said that was correct. Attorney Saari said Mr. Denault's intention is not to keep the unit as a 4-family and that his son will take it down to 2-family in the future. Mr. McGuirk said there is no way to guarantee this and the land will be around a lot longer than the family. Attorney Saari said a condition could be put that at some period of time the property has to be converted to two units. This would be a deed restriction.

Vic Lessard said he was in favor of this petition. By doing this it will guarantee against this becoming a condo. Mr. McGuirk said he did not agree.

Mr. St. Pierre asked about deed restrictions. Attorney Saari said you cannot put restrictions that were not in the lease. Mr. St. Pierre said he felt the Town Counsel's opinion should be requested. Mr. McGuirk said this Board cannot take deed restrictions into consideration when a vote is taken. Mr. Schultz said Mr. St. Pierre had a point as to whether this lot line adjustment is actually a subdivision of the land and whether this violates a restriction in the deed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Provencal said he would call it subdividing if it were three lots. Mr. McGuirk said if three units were put in you need 60,000 feet. This is not even 1/10 of what it should be. How can you justify this?

Attorney Saari said this is not a big building. There are only five bedrooms in the entire building.

Moved by Mr. Vic Lessard to postpone the hearing of this Petition until the next meeting and check with counsel. There was no second to the motion.

Mr. McGuirk said a vote should be taken as if there were no deed restrictions. Mr. McGuirk said this is taking parking away from a multi-unit and giving it to a smaller unit.

Moved by Mr. McGuirk and seconded by Mr. St. Pierre, to deny Petition 26-09.

Acting Chairman Provencal asked if the five criteria had been met. Mr. Vic Lessard replied that he was not sure, Mr. McGuirk said no, Mr. St. Pierre said no, Mr. Jack Lessard said no. Acting Chairman Provencal said he felt they had been met.

VOTE: 4-0-1 (Mr. Vic Lessard). Motion passed.

At this time, Mr. O'Brien returned as Chairman and Mr. St. Pierre stepped down.

27-09 The petition of Kim Smith for property located at 19 Boars Head Terrace seeking relief from Articles 1.3, 4.1.1, 4.5.1, 4.5.2 and 4.5.3 to raze and remove existing non-conforming single family home and construct a new single family home providing better off-street parking. This property is located at Map 266, Lot 25 in a RA zone.

Kim Smith, applicant, Brian Melissi, Engineer, and Gino Velar, contractor, came forward.

Mr. Melissi said they want to raise an existing non-conforming single-family home and build a new one. This would eliminate the present encroachment. There will be a drive-under garage. This will be new parking and there will be two parking spots as required. The septic system will be replaced and they will connect to the sewer system. He went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. McGuirk asked why on the east side they were going from an 8.6 foot to a 6.5 setback. Mr. Melissi said they were trying to be sensitive to the abutters. Mr. McGuirk said in his opinion the

opposite was done. Mr. McGuirk said he believed that there should also be a 4 foot setback at the front stairs and there might be a better way to do this. Mr. Melissi said not without diminishing the size of the building.

Comments from the Audience

Jeff Dowd, 50 Boars Head, came forward. He said he was speaking in favor of the petition. Off street parking will be created. There are also health and welfare aspects to consider such as the removal of the septic tank. Everything would also be more aesthetically pleasing. Another concern is water runoff. Mr. Dowd said he would like to request that the grade be kept as it is to allow water drain off.

Sharon Burch, co-owner of house to the west, came forward. She said she had previously submitted a letter to the Board. Ms. Burch expressed concern about two markers that have become visible. Mr. Melissi said they had not placed those markers. They did due diligence trying to find the property markers. They did not mark anybody's property.

Jeff Dowd read Ms. Burch's letter to the Board expressing concern about parking and water run off.

Ed St. Pierre, abutter, came forward. He gave some history regarding the property and said he was in favor of this project.

Ken Doyle, abutter, came forward and said he was in favor of the project.

Back to the Board

Chairman O'Brien said he would like to see the stairs pushed back and that the washer and dryer could be relocated to the basement or the entrance hall reduced by 2 feet. Mr. Provencal said he did not share this concern. Chairman O'Brien said he was after the 4-foot setback at the front staircase as proposed by Mr. McGuirk. Mr. Vic Lessard agreed.

Chairman O'Brien also expressed concern about the retaining wall since it appears in the artist concept to not allow for an 18 foot parking space. Mr. Melissi said they would ensure the retaining wall did not interfere with the parking space.

Moved by Mr. Vic Lessard and seconded by Mr. McGuirk, to grant Petition 27-09 subject to the four-foot setback at the front stairs.

Chairman O'Brien asked if the Board felt the five criteria had been met. The members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

28-09 The petition of John & Elizabeth Krueger for property located at 789 Ocean Boulevard seeking relief from Articles 1.3 and 4.5.1 to re-frame existing hip roof to a gable style support roof with columns, move front wall back 6 feet and build 6'x26' deck over existing building footprint. This property is located at Map 211, Lot 6 in a RA zone.

Bob Dawkin, Dawkin Builders, came forward representing the Kruegers. He went through the five criteria and said he felt they 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 and seconded by Mr. McGuirk, to grant Petition 28-09.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members replied that they had.

VOTE: 5-0-0. Motion passed unanimously.

29-09 The petition of Debra & Robert Fleig for property located at 747 Ocean Boulevard #1 seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to replace and enlarge existing steps and do alterations to the front and side of the building within the 20-foot and 10-foot setback. This property is located at Map 223, Lot 38 in a RA zone.

Debra Fleig and Attorney Peter Saari came forward. Attorney said the applicants desire to go from four bedrooms to three and also want a second bathroom and a small deck. This was a 1940's house purchased out of a Sears Roebuck catalog as a kit. This property needs to be reorganized and rehabilitated. The applicants are looking for increased safety and aesthetics. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Chairman O'Brien asked about the separation between the buildings – it appears to be less than 7-feet. Ms. Fleig said they have pulled the foundation in by 18-1/2 inches and this will show on a new floor plan. Chairman O'Brien stated that no air conditioning unit appears on the proposed plot plan to the south or west side and if they intend to put a unit there it would require prior Zoning Board approval.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Vic Lessard and seconded by Mr. Provencal, to grant Petition 29-09 with the stipulation that there be 7 feet between buildings and no air conditioning unit on the south or west side without prior Zoning Board approval.

Chairman O'Brien asked the Board if they felt the five criteria had been met. The members replied that they had.

VOTE: 5-0-0. Motion passed unanimously.

30-09 The Appeal of an Administrative Decision of the Planning Board dated July 1, 2009 for property located at 1044 Ocean Boulevard. This property is located at Map 116, Lot 8 in a RA zone.

Chairman O'Brien said this was an appeal of a Planning Board decision to issue a special permit to put Rosa Ragusa bushes on the east side of the Dory Inn. Chairman O'Brien said he wanted to make sure this Board has jurisdiction for this appeal in accordance with RSA 676:5, III (Appeals Process) and RSA 674:21 (Innovative Land Use Controls). If not, it will be necessary to appeal this to the Superior Court; the applicant has already appealed to the Superior Court which has issued a certiorari order. Chairman O'Brien said he would like to approach this petition in two steps – determine if this Board has jurisdiction and if so, then the merits of the case could be discussed.

Attorney Jeff Spear stepped forward on behalf of the applicants. He said he did not believe the Zoning Board has jurisdiction. He submitted a letter with an attachment of the Minutes of a Planning Board meeting from January, 1985. He said it was clear that this matter belongs in Superior Court.

Attorney John Misson representing the other side came forward and said he agreed with the assessment that the Zoning Board does not have jurisdiction.

Moved by Mr. Provencal and seconded by Mr. Jack Lessard, that the Zoning Board of Adjustment has discussed this matter and agrees that they do not have jurisdiction in this matter.

VOTE: 5-0-0. Motion passed unanimously.

BUSINESS SESSION

Approval of Minutes – August 20, 2009

Moved by Mr. Vic Lessard and seconded by Mr. Provencal, to approve the Minutes of August 20, 2009.

VOTE: 4-0-1 (Mr. Bryan Provencal). Motion passed.

Adjournment

There being no further business to come before the meeting, the meeting was adjourned at 9:23 p.m.

Respectfully submitted,

Joan Rice
Secretary