

**HAMPTON ZONING BOARD OF ADJUSTMENT  
AMENDED MINUTES  
May 20, 2010**

**Members Present**

Bill O'Brien, Chairman  
John Gebhart  
Tom McGuirk  
Vic Lessard  
Ed St. Pierre (Alternate)

**Others Present**

Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

**PETITION SESSION**

**08-10** The continued petition of Robert & Pamela Perreault for property located at 7 James Street seeking relief from Articles 1.3, 4.5.2 and 4.5.3 to allow for removal of an old porch with failing roof and rebuild on existing footprint and remove fireplace and replace with closet on existing chimney foundation. This property is located at Map 152, Lot 5 in a RA zone.

Chairman O'Brien said he would step down during the hearing of this petition. Mr. McGuirk took over as Acting Chairman and Mr. St. Pierre stepped in as alternate.

Robert Perreault, petitioner, and Attorney Robert Casassa, Casassa & Ryan, came forward. Attorney Casassa said this was a continuation of their appearance in April. There had been concerns about the public notice; all abutters were not properly notified. Attorney Casassa presented a letter from the concerned abutter who was not notified of last month's meeting. This abutter said that although some view would be lost, there was no objection to the proposal.

Attorney Casassa said the petitioner is seeking relief to allow for the removal of an old porch and to rebuild on the existing footprint and remove a fireplace and replace with a closet on the existing chimney foundation. The appearance of the property would be improved. Attorney Casassa went through the five criteria and said he felt they had been met.

Attorney Casassa said this was also the subject of a warrant article in March and the voters said the roof can be altered. In this case the roof on the porch would be pitched versus flat. The petitioner plans to use this property on a seasonal basis.

*Questions from the Board*

Mr. St. Pierre asked if there were plans to add anything more. Mr. Perreault said no. Attorney Casassa said anything else would have to go back to the voters.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. Lessard and seconded by Mr. Gebhart, to grant Petition 08-10 on the condition that the warrant article relief is recorded.

Acting Chairman McGuirk asked the Board members individually if they felt the five criteria had been met. The members individually agreed that they had.

**VOTE: 4-0-0.** Motion passed unanimously.

At this time, Mr. O'Brien rejoined as Chairman.

**09-10** The petition of Luis Pedroso, thru Duarte Oliveira, for property located at 47 Dumas Avenue seeking relief from Articles 1.3 and 4.5.2 to allow for the addition of a full second floor with roof deck on the existing 1 ½ story single family home, having no change to the existing footprint or exterior grade. This property is located at Map 267, Lot 47 in a RA zone.

Mr. Duarte Oliveira came forward. He said the proposed project will improve the appearance and value of the property and benefit the community. Mr. Oliveira 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. McGuirk and seconded by Mr. Lessard, to grant Petition 09-10.

Chairman O'Brien asked if the air conditioning would be enlarged. Mr. Oliveira replied that the awnings would be removed and a second air conditioner would be put in that area; however, its placement would not require any setback relief.

Mr. Lessard asked if there would be any generators. Mr. Oliveira said there would not.

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

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

**10-10** The petition of Gerald & Carol Lambert, Trustees of 735 Ocean Blvd Realty Trust for property located at 735 Ocean Boulevard seeking relief from Articles 4.5.1 and 4.5.2 to expand second story deck 2 feet closer to Ocean Boulevard (existing deck is 8.2 feet in width, proposed deck shall be 10.2 feet in width). This property is located at Map 223, Lot 76 in a RA zone.

Gerald Lambert and Attorney Stephen Ells came forward. Attorney Ells presented letters from six abutters supporting this project. Attorney Ells said there had been a second-story deck and enclosed sun porch. The storm in February destroyed much of the sun porch. The old sun porch had a flat roof. The proposed sun porch will have a pitched roof. The petitioner would like to extend two feet closer to Ocean Boulevard. If this is approved, it will be 12 feet from the property line. Attorney Ells went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Mr. St. Pierre asked about deed restrictions. Attorney Ells said the new construction will be within 9 feet of the side setback where 10 feet is required, and that deed restrictions apply to setbacks of less than 7 feet. Mr. St. Pierre asked how this will line up with other properties on Ocean Boulevard. Attorney Ells said he believed there would be a slight bump out of 2 feet and that when he looked at the way this house lined up to those houses to the south, beyond 1<sup>st</sup> Street, they were a lot closer to Ocean Blvd. Chairman O'Brien reminded everyone that those houses were in the Business Seasonal zone which has a setback requirement of 4 feet versus the applicants' area (Single Family) which has a 20 foot setback requirement.

Chairman O'Brien said he looked at the property. He said the relief being sought is for an expansion of the deck, but actually the petitioner is asking for deck expansion and also an expansion of the sunroom which is not in the relief sought. Attorney Ells said he felt this was a technical issue and the petition should be taken as a whole. Chairman O'Brien said he believed that this petition has not been notified correctly.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Mr. McGuirk said his concern is that the properties should line up. This will take up 2 feet of an abutter's view and that adversely affects the abutter's property. Mr. Lessard expressed the same concern. Mr. Gebhart said the properties should line up. Mr. St. Pierre said he also prefers frontages to be the same.

**Moved** by Mr. Lessard and seconded by Mr. Gebhart, to deny Petition 10-10 as requested and to grant only the ability to build on the existing footprint, no closer to Ocean Boulevard (4.5.1 is denied only for the expansion of 2 feet), the second-story deck and enclosed sun porch with a pitched roof (4.5.2 is approved).

Chairman O'Brien asked the Board members individually if they felt the five criteria had been met. The members individually felt the criteria for front setback relief had not been met.

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

**11-10** The petition of Walter & Joanne Kivlan for property located at 10 Fellows Avenue seeking relief from Article 4.5.2 to place a standby generator on the side of the property less than the required 7 feet from the property line. This property is located at Map 292, Lot 79 in RB zone.

Walter Kivlan and Attorney Peter Saari, Casassa & Ryan, came forward. Mr. Kivlan said this would be a standby generator with only 66 decibels. He presented a letter supporting his petition from his abutter on the right. The generator would be behind a fence, would not be used regularly and would not be unsightly or any noisier in this location. Attorney Saari went through the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. St. Pierre asked how many feet the generator would be from the lot line. Attorney Saari said it would be about 2 feet from the line.

Mr. Lessard asked if natural gas would be used. Mr. Kivlan said it would.

Mr. McGuirk said that he recently had concerns with a generator that was proposed for a house on Ancient Highway. This applicant, however, has proposed a different generator with a very low noise factor which is not nearly as nosy as the Ancient Highway proposal.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to grant Petition 11-10.

Chairman O'Brien said he would want the petitioner to check with the Building Inspector about the requirement of being 3 feet from the fence and 7 feet from the house.

Chairman O'Brien asked the Board members individually if they felt the five criteria had been met. The members individually agreed that they had with the exception of Mr. St. Pierre who abstained.

**VOTE: 4-0-1 (St. Pierre).** Motion passed.

**12-10** The petition of Jesse & Wendy Anderson, Jill Heslin, Richard, Linda & Holly Bauer, Robert & Amy Agnew, Polly Goldcamp, Amy Agnew, Laurie Felter, Robert & Virginia Felter and Charlotte Bauer, thru Witch Island Condo Association, for property located at Witch Island Way seeking relief from Articles 4.1, 4.2, 4.3, 4.5.1 and 8.2 to subdivide the tract to create 2 lots, one lot being the cottage at 162 Kings Highway to contain 6478 sq ft and the other being the remainder of the property, where the cottage lot would have less than the required frontage, front set back, lot width and lot area (but would have the required "per dwelling unit" lot area), and where the remainder would have less than the required continuous frontage for multi-family use. This property is located at Map 183, Lot 1 in a RB zone.

Bill Bauer and Attorney Peter Saari came forward. Attorney Saari said this property has been in the family for three generations. It was approved by the both the ZBA and Planning Board as a condo some time ago. Petitioners would need 100 feet of contiguous frontage but has only 96 non-contiguous feet. Attorney Saari said the appearance of the property would not be affected if the petition is granted. The property would have the same number of units in the same location with the same facilities and on-site improvements as it would as presently approved. Attorney Saari went through the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. St. Pierre asked Attorney Saari if this property was used in the calculations for the number of condos. Attorney Saari responded in the affirmative. Mr. St. Pierre also asked Mr. McGuirk if this change would have affected his prior decision. Mr. McGuirk said yes.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Mr. Lessard asked if all the condo owners are aware of this petition. Mr. Bauer said they were. Mr. Lessard said he would abstain from voting on this petition because he has done work previously for the petitioners.

Chairman O'Brien said he was opposed to the petition. He said the petitioners had appeared before the Board last year and sought relief from just two items concerning multi-family dwellings (8.2.3 and 8.2.6) in order to build more condo units. Now they are asking for relief from all six items of the 8.2 multi-family dwelling standards as well as relief from minimum lot area, minimum frontage, minimum lot width, and minimum front setback without adequate criteria justification. When the two items concerning multi-family dwelling relief were approved last year, Chairman O'Brien said he had major reservations but that there were several conditions imposed and that he gave consideration to the fact that there was adequate frontage on Kings Highway for the condo unit association. Granting this petition would also create a pork chop lot for the remaining condo units with inadequate frontage and therefore would also not meet the requirements of footnote 22.

Mr. McGuirk said he agreed with the concerns of Chairman O'Brien and that the hardship for relief had not been met.

Mr. Gebhart suggested that the condo association exclude the front cottage from the cost of the driveway (the major reason given by Attorney Saari for the petition) rather than separate the front cottage from the condo association.

**Moved** by Mr. McGuirk and seconded by Mr. Gebhart, to deny Petition 12-10.

Chairman O'Brien asked the Board members individually if they felt the five criteria had been met. The members individually said they had not been met.

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

**13-10** The petition of David Heath & Lena Kertanis for property located at 7 Cogger Street seeking relief from Articles 4.5.2 and 4.5.3 to build a 16'x12' storage shed 5' from side and 5' from rear property lines. This property is located at Map 109, Lot 32 in a RA zone.

Mr. Kertanis and Mr. Heath came forward. Mr. Kertanis explained that this placement of the proposed shed would allow them better use of the rest of their property and would

have no visual impact. Mr. Kertanis went through the five criteria and said he felt they had been met.

*Questions from the Board*

Chairman O'Brien informed the applicants that if the shed was 100 sq. ft. or smaller, it would not require relief and could be 4 feet from the property line.

Mr. McGuirk asked why the proposed shed is so big (192 sq. ft.). Mr. Kertanis replied that it is for needed storage capacity.

Chairman O'Brien asked if any business was or is to be conducted at this location. Mr. Kertanis said no, it is strictly a single-family residence.

Mr. Lessard suggested that the petitioners withdraw and come up with something else, perhaps two smaller sheds. Mr. Kertanis agreed to withdraw. Mr. Lessard suggested he see Kevin Schultz to see what would be the best option.

**Moved** by Mr. Lessard and seconded by Mr. Gebhart, to allow withdrawal of Petition 13-10 without prejudice.

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

**BUSINESS SESSION**

Chairman O'Brien said the election of officers, appointment of alternates and adoption of the Rules of Procedure would be done next month when Mr. Provencal is present.

**Adoption of Minutes**

**Moved** by Mr. Lessard and seconded by Mr. Gebhart, to approve the Minutes of April 15, 2010.

**VOTE: 3-0-2 (McGuirk, St. Pierre).** Motion passed.

**Adjournment**

There being no further business, the meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Joan Rice  
Secretary