

**HAMPTON ZONING BOARD OF ADJUSTMENT  
MINUTES  
February 16, 2012**

**Members Present**

Bill O'Brien, Chairman  
Vic Lessard  
Tom McGuirk  
Bryan Provencal  
Ed St. Pierre

**Others Present**

Kevin Schultz, Building Inspector  
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**

**34-11 ...** The continued rehearing of Jay Ponchak and Sharon B. Ponchak for property located at 15 Mace Road seeking relief from Article IV, Sections 4.2, 4.3 and Footnote #22 to subdivide the existing 1.37 acre lot into two residential lots where the "to be "created" lot will not have the required frontage or lot width. This property is located on Map 128, Lot 49-2 and in a RA Zone.

Sharon Ponchak, Petitioner, and Stephen Ells, Holmes & Ells, came forward. Attorney Ells said they had first come before the Board in October and were denied and a motion for rehearing was made. Attorney Ells said this is a 1.37 acre lot to be subdivided into two residential lots. Attorney Ells went through the five criteria and said he felt they had been met.

Regarding the hardship, Attorney Ells stated that the prior owner had petitioned for variances in 1991 to subdivide the lot and was denied because there was no finding of hardship. When the Ponchaks purchased this property in 1997 they were aware of this. What the Ponchaks knew and understood about their rights to subdivide their land in 1997 has changed drastically because of changes in the law and they now know they have a right to a hearing on the merits and a right to have their petition analyzed on the standard set forth in the Simplex case.

Attorney Ells said this property is surrounded by developed lots with sub-standard frontage. The proposed new lot will not be substantially out of character for the neighborhood.

Attorney Ells stated that the Ponchaks would accept the condition of a common driveway if the Board so desired. They would also accept committing to a specific location for the new residence.

*Questions from the Board*

Mr. St. Pierre asked Attorney Ells to expand his explanation of hardship to be suffered by the applicants if the petition is denied. Attorney Ells said the petitioners would not be allowed to make a complete use of their property.

Mr. McGuirk said the Board cannot penalize the Ponchaks for their neighbor being too close to their property line.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Mr. Lessard asked where the Petitioners plan to build the second residence for their son. Attorney Ells said they would like to put it in the southwesterly [almost westerly] corner of the new lot.

Chairman O'Brien asked about the driveway. Attorney Ells said it would come in and out of the southerly [south-easterly] portion of the horseshoe then would break off and go to the new lot.

Attorney Ells said the Petitioners would be fine with a shared driveway and the location of the house being determined by the Board.

Mr. Provencal said he felt this plan is substantially different from what was brought to the Board previously. Chairman O'Brien agreed.

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to grant Petition 34-11 subject to amending the site plan to show a common driveway leading from the existing horseshoe driveway to the new lot and also showing a rectangle building envelope of 60 feet in the southwest corner of the new lot wherein the house is to be located. Site plan will also indicate perpetual easement for the driveway.

Chairman O'Brien said he would like the new plan submitted to the Building Inspector for approval prior to submission to the Planning Board. Attorney Ells agreed.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members with the exception of Mr. St. Pierre agreed that they had. Mr. St. Pierre said he did not believe Criteria #3 had been met.

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

**07-12 ...** The petition of Albert & Linda Scranton for property located at 21 Riverview Terrace seeking relief from Article VIII, Sec. 8.2.3 to remove, replace and repair roof damage caused by water rot and address safety issues with fallen roof. Rebuild on existing footprint and build over platform used for exterior storage which is extended to full length of the house. This property is located on Map 292, Lot 34 and in a RB Zone.

Albert and Linda Scranton, Petitioners, came forward. Mr. Scranton said they want to rebuild the porch properly and extend the length by six feet. This will provide extra space for winter storage and will keep the yard clean. The roof will appear more uniform and be more conforming to the spirit of the neighborhood. Mr. Scranton went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Mr. St. Pierre asked if this work was started without a building permit. Mr. Scranton said it was but was stopped when he found out he needed a permit. Chairman O'Brien asked where the trash containers would be located. Mr. Scranton said they would be at the back of the cottages. Chairman O'Brien asked about the stairs. Mr. Scranton said they would be recessed into the porch and will not extend beyond the house since no relief was sought.

#### *Comments from the Audience*

There were no comments from the Audience.

#### *Back to the Board*

**Moved** by Mr. McGuirk and seconded by Mr. St. Pierre, to grant Petition 07-12 subject to the stairs being recessed to the edge of the house.

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

**VOTE:** 4-1 (O'Brien). Motion passed. Chairman O'Brien said he did not vote for granting of this petition because a building permit was not obtained prior to initiating construction; thus it did not allow for a critical review.

**08-12 ...** The petition of California Property Management, Inc. for property located at Drakeside Road Boulevard seeking relief from Article IV, Section 4.4, 4.7 and Article VIII, Section 8.2.4 to re-approve the previously approved multi-family project where variances are required to allow two (2) twenty four (24) units buildings where the ridges would exceed the limit by less than 7 feet, but both of the buildings and the lower half of the roof would all meet the height limit, and for a parking area which is less than 25 feet from the front of the buildings. This property is located on Map 172, Lot 13, and in a G Zone. Peter Saari, Casassa & Ryan, Joe Coronati, Jones & Beach, and David White, Architect, came forward.

Chairman O'Brien asked about the relationship of the current owner and the applicant, equitable owner California Property Management. Attorney Saari said that California Property Management, subsequent to the petition filing, has now acquired the title. Chairman O'Brien then asked if two conditions of the original approval had been satisfied; the 22+ acre conservation easement and the transfer to the town of about .15 acres for parking. Attorney Saari indicated that the conservation easement has been recorded; however, the land transfer to the town has not been done. He said the applicant intends to complete the transfer.

Attorney Saari then made his presentation and said a larger project on this land was previously approved. However, it was never developed. The current owner has decided to complete the project, but has scaled it down. Parking will be outside as opposed to under the building in the previous proposed project.

Mr. Coronati said the buildings are smaller in size. There are sufficient parking spaces according to code. Mr. White discussed the floor plan of the units. The units are smaller than in the previous project. The edge of the roof will be about 10 feet lower than previously proposed. Mr. White said they are asking for a pitched roof which is more attractive than a flat roof which would satisfy the height restriction.

Attorney Saari went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Mr. St. Pierre said most of this project exists in the buffer. Mr. Coronati said that was true as they have kept development in the smallest footprint possible. Mr. St. Pierre asked if State approval had been obtained for this project. Mr. Coronati said yes, but now that it has been amended, it will be necessary to go back to the State. Mr. St. Pierre asked about Conservation Commission approval. Mr. Coronati said it will be necessary to go back before all boards, but they do have a valid site plan approval. Mr. McGuirk asked about view corridors for Hampton Meadows. Mr. Coronati said corridors have been opened up.

*Comments from the Audience*

Jennifer Lermer came forward. Ms. Lermer said she is opposed to this project. There does not seem to be a need for this development. Ms. Lermer said she was concerned about harm to the wetlands and marsh. She said there could also be safety and drainage problems.

Attorney Paul Figlowski representing the Hampton Meadows Condo Assn. came forward. He said there are 153 single family homes directly opposite this proposed project. The residents are opposed relative to the number of units and the height requirement. Attorney Figlowski said the variances that were previously granted are no longer valid. Two structures of 8 units each could be built on this parcel without a variance. This is a question of density.

Jay Diener, Chairman of the Conservation Commission, came forward. He said DES permits and special Town permits were issued previously, but have expired. These permits must now be applied for again.

Chairman O'Brien asked if building could take place under the previous approval without coming before the Board. Kevin Schultz, Building Inspector, said they could begin the original project but would still have to get new DES and special Town permits.

Chairman O'Brien asked about surface area for parking. Mr. Coronati said it was previously asphalt, but now it would have to be a porous pavement parking lot in order to meet the Town and State storm water requirements.

David Anderson, 50 Hampton Meadows, discussed the traffic on Drakeside Road. He said his concern was for safety as this project would only add to the traffic problem.

Rick Levy, Hampton Meadows, asked about flooding of the marsh and snow removal. Mr. Coronati said there was ample area for snow. Also the lowest building point will be 18 feet above the flood plain level of 9 feet and the lowest parking area point will be 10 feet above the flood plain level.

John Servetnek, 93 Hampton Meadows, expressed concern about traffic being increased.

Kreon Cyros came forward. He said he was speaking on behalf of the Board of Directors of the Hampton Meadows Condo Association. He presented a letter from the Board of Directors opposing the project and requesting that any further variance-required development on Drakeside Road be made only after a survey is done to define the new edges of marshlands, a Drakeside Road traffic study with a 3-year accident report is done and a traffic study to assess the impact of the new brewery and restaurant is done.

Chairman O'Brien said traffic issues and conservation issues are under the purview of the Planning Board.

Attorney Saari and Mr. Coronati responded in detail to the issues raised by the audience.

*Back to the Board*

Mr. McGuirk said a lot of issues raised by the audience are Planning Board or Conservation issues. Mr. McGuirk said this is a 25 acre parcel, not a 3 acre parcel as some of those opposed have said. The buildings are placed so as to maintain the view corridors for Hampton Meadows residents. Drakeside Road is a class 5 road, not a country road as some have said. Also, there is no need for a legal opinion, as was suggested by Attorney Paul Figlowski, since this Board is strictly dealing with three variances and not any side issues.

Chairman O'Brien expressed his agreement with Mr. McGuirk. Chairman O'Brien said he wants the parking lot land deed transfer to the town consummated. He stated, for item 11 on the submitted site plan, that the word "intended" should be deleted ... the trails are for public use now that the conservation easement has been recorded.

**Moved** by Mr. McGuirk and seconded by Mr. Lessard, to grant Petition 08-12 subject to the parking lot land deed transfer to the town being consummated.

Chairman O'Brien asked the Board if they felt the five criteria had been met. Each member agreed that all five criteria had been met.

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

**09-12 ...** The petition of Five J Street Realty Trust, Ninety-One Ocean Blvd. Realty Trust, Eighty-Nine Ocean Blvd. Realty Trust, Eight-Three Ocean Blvd. Realty Trust for property located at 83, 89 and 91 Ocean Blvd. and 5 J Street to obtain re-approval of a 4-story, 6-unit retail/36-unit residential condominium project where relief is needed from Articles 4.1.1, 4.4, 4.5.2, 6.3.1, 8.2.3, 8.2.4 and 8.2.6 the lot area per dwelling unit, height, side setback, parking, 40-foot setback, 10-foot parking setback and 20-foot buffer requirements. The property is located on Map 293, lot 8-1, Map 290, Lot 146-1, Map 290, Lot 145-1, Map 290, Lot 144 (leased) and in a BS Zone.

At this time Mr. McGuirk stepped down and Mr. Jack Lessard (alternate) stepped up to the Board.

Attorney Peter Saari, Joe Coronati and Rick Green, developer, came forward. Attorney Saari said that this is the former Old Salt property consisting of six lots. A project much larger than this went through the court system and ruled in the Boards as well as the developers favor, but due to the economy the project did not go forward.

Mr. Coronati said this building takes up less than one-half of the parcel. Side yard variances on J and K Streets are needed. The first floor will be commercial and the three top floors residential. The parking lot runs from J Street to K Street. The rear area will be landscaped. All residential units will have an ocean view and a deck. The building will be over 60 feet from the abutting houses in the back.

Attorney Saari went over the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. Provencal said he believed this is a good project.

Chairman O'Brien said he wants to ensure that the front columns are set back far enough so that the roof overhang will come no closer than the 4 foot setback required for the front of the property on Ocean Blvd. In addition, Chairman O'Brien wants a 2 foot setback on the side setback for the foundation, walls, decks, etc. so that the roof eaves overhang will not be over town property.

*Comments from the Audience*

Tom McGuirk, Ocean Blvd., said this is a good project because it will increase pedestrian traffic.

Ed Shipanic, 7 J Street, said this is a vast improvement over the prior plans. Mr. Shipanic did express a concern about flooding. Chairman O'Brien said the Planning Board would address the flooding issue.

*Back to the Board*

All Board members expressed support for the project.

**Moved** by Mr. V. Lessard and seconded by Mr. J. Lessard, to grant Petition 09-12 subject to coming no closer to the side property line than 2 feet for any part of the building including the foundation; only the top roof eaves can come out to a zero setback.

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

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

At this time Mr. J. Lessard stepped down and Mr. McGuirk rejoined the Board.

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**BUSINESS SESSION**

**Adoption of Minutes**

**Moved** by Mr. St. Pierre and seconded by Mr. Provencal, to approve the Minutes of January 19, 2012.

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

**Adjournment**

There being no further business, the meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Joan Rice  
Secretary