HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
August 16, 2012

Members Present
Bill O'Brien, Chairman
Vic Lessard
Tom McGuirk
Bryan Provencal
Ed St. Pierre
Jack Lessard (Alternate)
Henry Stonie (Alternate)

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

32-12 ... The petition of Albert R. Fleury for property located at 6 Johnson Avenue seeking relief from Article III, Section 3.26(a) to remove existing dwellings and create parking areas on parcel. Parcel abuts existing parking areas for patrons of Wally's Pub. This property is located on Map 293, Lot 65 and in a RB Zone.

At this time Mr. V. Lessard and Mr. Provencal stepped down from the Board and Mr. J. Lessard and Mr. Stonie stepped up to the Board.

Albert Fleury, Attorney Francis Bruxton and Henry Boyd, Millennium Engineering, came forward. Attorney Bruxton said the notice was adjusted as requested at the last meeting and they are here to ask for a variance for Lot 65 to use it for parking in conjunction with Wally's Pub. Attorney Bruxton showed the preliminary plan that will go to the Planning Board. The proposed fencing which will provide buffering will be between Lot 64 and Lot 65 and along the boundary of Lot 71. The Police Chief's concerns regarding lighting have also been addressed.

Attorney Bruxton noted that Mr. Schultz had written a letter to Mr. Fleury stating that it was his belief and interpretation that the use of Lots 71 and 72 as parking in conjunction only for the patrons and employees of Wally's Pub is a pre-existing, non-conforming use (grandfathered) and can remain as such provided the described use does not change.

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

Questions from the Board

Mr. Stonie said he would like to look at this proposal in a larger format which impacts the Zoning Board of Adjustment in this Town. Mr. Stonie said he had seen areas and boundaries structured through warrant articles which have been submitted by petitioners. The ZBA performs its function to provide equity for individual petitioners and for the Town. The Board is reactive, not pro-active. By employing a variance procedure the Board creates boundaries at their will. Mr. Stonie said he felt it would be best for the petitioner as well as the Town to have the petitioner bring through a warrant article.

Chairman O'Brien expressed concern about the sound barrier. Mr. St. Pierre asked about the fence on Lot 65. Attorney Bruxton said it will be more of a stockade fence. The same type would go where the chain link fence is now if it will fit. Mr. Boyd indicated on the plot plan that the double-sided stockade fence would run from Johnson Avenue to Riverview Terrace and along Riverview Terrace to the existing double-sided stockade fence. He said it might have to be a narrower fence post but would still be double-sided.

Comments from the Audience

Steve Light, 11 Riverview Terrace, came forward. Mr. Light said the fence on Riverview Terrace presently has one opening and two are proposed so there wouldn't be much of a fence. Mr. Light said he was concerned about motorcycle noise at Wally's closing time of 1:00 a.m. Lighting is also a concern. Parking lots usually do not have lights on a 40-foot pole. Mr. Boyd said the lighting will be designed so that it does not offend neighbors and meets safety issues. Mr. Schultz said he did not believe a 40-foot pole was necessary. Mr. Boyd said the fence on Riverview Terrace would have two openings, but they would be only 11 feet wide.

Mr. Light said there was also a drainage issue and he was concerned about water flowing out of that lot onto Riverview. Mr. Light asked about having gates at the entrance and exits so as to preclude use during non-business hours. Chairman O'Brien said that lighting, drainage, and gates were issues that should be addressed by the Planning Board.

Mr. Light said he takes exception to Mr. V. Lessard's remark at the last meeting stating Riverview residents were "trailer people". Chairman O'Brien said Mr. Lessard did not mean it in that context and apologized on behalf of the Board to Mr. Light.

Trisha DeRoch, 13 Riverview Terrace, came forward. She expressed concerns about the legality of Lots 71 and 72, sound buffering, dumpsters, lighting, and drainage. She said she felt this would adversely affect property values. Chairman O'Brien said Lots 71 and 72 are grandfathered and there is no recourse except to appeal the Building Inspector's decision. Chairman O'Brien further stated that lighting and drainage should be addressed by the Planning Board.

Mr. Boyd said they are trying to make the property more attractive, achieve better traffic flow and address the drainage problem.

Mr. Fleury indicated that the dumpsters were located beside the double–sided stockade fence on lot 73 and pick-up is every morning by Waste Management as part of their beach rubbish collection process.

Julie O'Brien, 16 Johnson Ave., expressed concern about traffic turning around in driveways, etc. when the parking lot is full. Chairman O'Brien said the Police Chief has requested a "Lot Full" sign at the corner of Ashworth and Johnson.

Dennis Moore, Bow New Hampshire, came forward. He said his mother-in-law resides at 6 Johnson Ave. Mr. Moore said there were definitely houses torn down after the zoning line was drawn up and he will take legal action. Chairman O'Brien said they would have 30 days from tonight to do an appeal. Mr. Schultz's opinion letter was then given to Mr. Moore.

Vic Lessard, Timber Swamp Road, came forward. Mr. Lessard said his comments at the last meeting were misunderstood. He actually said that there were some camper trailers on that road. Mr. Lessard said he never called anyone "trailer people".

Chuck Rage, 121 Ocean Blvd., came forward. Mr. Rage said he felt it would benefit everybody to have better lighting and fencing on this property.

Carol Geny, 18 Johnson Ave., expressed concern about motorcycle noise, bass noise on Wednesday night when the DJ is playing, and parking on the side of Wall's Pub on Johnson Ave. which impacts traffic flow. Chairman O'Brien referred her to the Board of Selectmen who can address issues of improper parking on streets and noise.

Attorney Bruxton then presented five letters in support of the petition:

Ann Hebert, Julie O'Brien's sister, came forward. She asked permission to speak since she is not a resident; permission was granted. Ms. Hebert questioned the hardship.

Chairman O'Brien stated that Wally's Pub is in the BS zone where no parking is required; has two additional parking lots; the three lots provide nearly 50 parking spaces for cars and motorcycles; and asked the applicant what the land hardship was for lot 65. Attorney Bruxton provided a very detailed explanation as to the hardship and covered both sub sections to the hardship test. Essentially he said it was premised on the fact that it is a unique location, is located next to two lots being used for parking, and would enhance traffic flow in the neighborhood.

Sandra Marsolini, 8 Johnson Ave., said the houses were removed in 1996 and spoke against the petition.

Back to the Board

Mr. McGuirk said the flooding issue is a Town problem and is not created by these lots. Mr. McGuirk also said alleged illegal activity in the lot is not Wally's fault. This can happen anywhere. Mr. McGuirk said a lighting survey needs to be done.

Mr. St. Pierre said he felt there have been improvements made on the sound problem. The bass issue on Wednesday nights does need to be addressed. Mr. St. Pierre said this project can be done in a positive way. Mr. St. Pierre said if this is granted, he would like a restriction placed on the approval as to what activities can be held on the property.

Mr. J. Lessard said he thinks it will be a good project once all improvements are made.

Chairman O'Brien said lighting should be addressed at the Planning Board, but he did feel lighting should go in the direction of Wally's Pub. The Planning Board should also address the gates. Side street parking and overall noise emanating from the Pub should be addressed by the Selectmen. Chairman O'Brien said he felt it would help noise attenuation if there was also a stockade fence with an 11-foot opening on Johnson Avenue that is similar to the existing, 10 foot high, double-sided, stockade fence.

Chairman O'Brien said he would be in favor of granting the petition if there was a restriction on the lot that is similar to the two lower lots, i.e., lot can only be used for Wally's patrons and employees parking so that all three lots would be identical in the restrictions. Chairman O'Brien would also request that the petitioner go before the Planning Board and obtain their review and approval; and that no demolition be done on the property until approval by the Planning Board and appeal periods are completed.

Moved by Mr. St. Pierre and seconded by Mr. J. Lessard, to grant Petition 32-12 with the following restrictions:

1. The lot can only be used as a parking lot for Wally's patrons and employees.
2. A "Lot Full" sign will be posted at the intersection of Ashworth and Johnson when the lots are full and not at the entrance to the lots.
3. All commercial activities will remain in the BS zone and no activities (such as barbequing, grilling, bull riding, etc.) will be conducted in the parking lots.
4. Approval will be obtained from the Planning Board.
5. No demolition will be done on the property until approved by the Planning Board.

Chairman O'Brien read each of the five criteria separately for each individual Board member and asked each member if the criteria had been met.

McGuirk:
Criteria 1: Yes
Criteria 2: Yes
Criteria 3: Yes
Criteria 4: Yes
Criteria 5: Yes

Stonie:
Abstain. Mr. Stonie said he would abstain from a vote on this petition because he believes there is a questionable jurisdiction of the ZBA in hearing this petition at this time.

St. Pierre:
Criteria 1: Yes
Criteria 2: Yes
Criteria 3: Yes
Criteria 4: Yes
Criteria 5: Yes

J. Lessard:
Criteria 1: Yes
Criteria 2: Yes
Criteria 3: Yes
Criteria 4: Yes
Criteria 5: Yes

O'Brien:
Criteria 1: Yes
Criteria 2: Yes
Criteria 3: Yes
Criteria 4: Yes
Criteria 5: Yes

VOTE: 3-0-2 (McGuirk, Stonie). Motion passed.

At this time Mr. J. Lessard and Mr. Stonie stepped down from the Board and Mr. V. Lessard and Mr. Provencal stepped up to the Board.

33-12 ... The petition of LMR Properties, LLC for property located at 540 Lafayette Road seeking relief from Article VIII, Sections 8.2.1, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to allow the conversion of 6 office units on the second floor in an existing commercial complex to three residential dwelling unit in the business zone where multi-family uses are permitted with Planning Board Review and Approvals so as to create a mixed use (office and residential) complex without meeting the layout requirements of Article VIII for multi-family projects. This property is located on Map 144, Lot 11 and in a B Zone.

Chris Ragusa and Attorney Michael Donahue came forward. Attorney Donahue said when Mr. Ragusa bought the property he knew there would be improvements to be addressed. He has now come to the conclusion that the property would function at its highest and best use if it had six office units on the first floor and three residential units on the second floor. This will allow for more parking, etc. Attorney Donahue went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. Lessard said he felt this is actually better for residential right now than for business.

Mr. Provencal said he felt it would be good for downtown to have more residential.

Mr. St. Pierre said he had no problem with this plan. Mr. St. Pierre asked if this would be a condo situation. Attorney Donahue said it was approved by the Planning Board as a condo when it was built, however, that option was never exercised and there is only one owner.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Provencal and seconded by Mr. Lessard, to grant Petition 33-12.

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.

BUSINESS SESSION

Adoption of the Minutes

It was decided to table the Minutes of July 19, 2012 until the next meeting.

Adjournment

Moved by Mr. Lessard and seconded by Mr. McGuirk, to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Joan Rice, Secretary