

**HAMPTON ZONING BOARD OF ADJUSTMENT**  
**MINUTES - Draft**  
**February 17, 2022**

**Members Present**

Bill O'Brien, Chairman  
Anne Bialobrzeski  
Erica De Vries  
Tom McGuirk  
Bryan Provencal  
Norma Collins, Alternate (Petitions 07-22 & 10-22)

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

The Pledge of Allegiance was said.

Chairman O'Brien introduced the Board.

**PETITION SESSION**

Chairman O'Brien announced that the Board would first address Petition 06-22 which is third on the Agenda.

**06-22...**The petition of Lisa Shea for property located at 192 North Shore Road seeking relief from Article(s) 2.3.7a(4), 4.9 to raze existing dwelling which is almost entirely within the 62' structure setback and build a new dwelling which will only be partially within the 62' structure setback. This property is located on Map 134, Lot 12 and in the RA Zone.

Henry Boyd, Millennial Engineering, said the new dwelling will have only 26 square feet in the Wetlands buffer while the current dwelling has 900 square feet. Mr. Boyd said they have submitted a Wetlands application. Mr. Boyd then went through the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. O'Brien asked about the height of the building. Mr. Boyd said the height was less than 30 feet.

Mr. O'Brien asked about going for five feet of relief which would take this completely out of the buffer. Mr. Boyd said there would not be a safe turnaround for vehicles.

*Comments from the Audience*

Marco Kakoszyna, 188 North Shore Road, said his property is just to the west. He said he is the most impacted abutter. Mr. Kakoszyna said he is most concerned about storm run-off. Also this proposal is to move the driveway right next to his property and it is not pervious surface. Mr. Kakoszyna said if this project is approved, he will be looking at a wall instead of the street.

Mr. O'Brien said Ms. Shea owns this property and can do whatever is allowed.

Mr. Kakoszyna said there must be a middle ground. Mr. Boyd said there is no way to move this out of the buffer. They are complying with all regulations. As for the storm water concern, they will install infiltration trenches. Mr. Boyd said he would speak to Ms. Shea about installing pervious pavers in the driveway

*Back to the Board*

Ms. Bialobrzkeski said water flows to the wetlands and will continue to do that.

Brianna O'Brien, Conservation Coordinator, said this project will go before the Conservation Commission and the Planning Board and the issue of run-off will be explored extensively.

George Skaperdas, 39 Acorn Road, said he did not see a problem and is in favor of this project.

*Back to the Board*

Ms. De Vries wished to inform the Board that she had a conversation with Mr. Kakoszyna recently by phone.

Ms. Bialobrzkeski noted that if she had to choose between a building setback and a Wetlands setback, she would go for the building setback.

**Moved** by Mr. Provencal, seconded by Ms. Bialobrzkeski, to grant Petition 06-22.

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

**Vote:** 5 yes, 0 no. Motion passed unanimously.

**03-22...**The continued petition of Riviera Condominiums LLC for property located at 431 & 435 Ocean Boulevard seeking relief from Article IV 4.4 footnote 27 for the installation of aesthetic fencing along the entire circumference of the roof (widows walk) 2 to 2.5 feet in height. This property is o Map 266, Lots 27 / 47 and in the BS Zone.

Chairman O'Brien said it would not be necessary to read the five criteria because this is a continuance.

Robert Pace and Tom House came forward. Mr. Pace said they came to the Board in December asking for direction to get some relief to hide the AC units on the roof. They came back in January and the Board gave recommendations. They have a letter from Jones & Beach stating the project was built to plan. Boise said snow load is not an issue. What they are planning is to put a straight railing system 3 feet from the AC units which will look like a roof deck.

#### *Questions from the Board*

Mr. Provencal said he was satisfied with this.

Ms. De Vries asked what the screens would be made of and what color they will be. Mr. Pace said they would be made of vinyl and would be white.

Ms. Bialobrzkeski said she still felt this should be a request for an Equitable Waiver. She said she would not be able to vote for a variance and would abstain.

Ms. De Vries said she would also prefer this to be an Equitable Waiver, but she understood how it could be granted with a variance.

Mr. Provencal said this can be fixed. An Equitable Waiver is for something you cannot fix.

#### *Comments from the Audience*

There were no comments from the Audience.

#### *Back to the Board*

**Moved** by Mr. Provencal, seconded by Mr. McGuirk, to grant Petition 03-22.

Chairman O'Brien asked the Board if the five criteria had been met. All members agreed that they had with the exception of Ms. Bialobrzkeski who abstained.

**Vote:** 4 yes, 0 no, 1 abstention (Bialobrzkeski). Motion passed.

**04-22...**The petition of Gary & Gail MacGuire for property located at 132 Kings Highway (Units 1 & 2) seeking relief from Article(s) Section 1.3 Expansion of non-conforming structure and Sections 2.3.7 C4 and 4.9 Reduction of 12' Dwelling Structure Setback from WCD to permit an addition to an existing structure which is located within the Wetland Conservation District (WCD) and 12' Dwelling Setback. The existing building and decks currently encroach both the WCD and the 12' Dwelling Setback in their current condition. The full buffer area is currently developed and maintained as lawn. The applicants are proposing to replace the existing decks with a building addition and add a 5' deck to provide access to the existing yard. The 1.58-acre property has one existing duplex dwelling with supporting infrastructure. This property is on Map 183, Lot 080/A and in the RB Zone.

Doug MacGuire representing Gary and Gail McGuire came forward. Mr. MacGuire said his parents own one-half of the duplex, but he is representing both owners. Mr. MacGuire presented a side by side comparison of existing and proposed. He said it has been determined that all they need from this Board are the two variances they are asking for. We are not talking about the area of the Wetlands buffer. That would fall to the Conservation Commission. The impervious is not being expanded and there will be drainage improvements. Water on the deck area will go through the slats and go under the deck. Roof drainage will go to a rain barrel system. Any more than that will go to a perforated pipe.

#### *Questions from the Board*

Ms. Bialobrzkeski said she has felt from the beginning that a variance is needed to advance into the buffer with the structure. She said she still thinks this is an issue. It also seems possible that the Applicants will be doing improvements that are more than 50% of the value of the structure. If so, the entire structure will have to be brought into FEMA compliance.

Brianna O'Brien, Conservation Coordinator, said it was her understanding that the Applicant is asking for a variance to 1.3 in addition to 4.9. If 1.3 is granted it would allow the Applicant to expand the use without limit into the buffer. It would take away the ability for the Conservation Commission and Planning Board to work with the Applicant and negotiate changes. Ms. O'Brien said she felt the Zoning Board is bound by the letter written by Jim Marchese that says the Applicant does not need that variance. If it is the Board's intention to grant the variance, it should be conditioned in some way upon limiting the expansion to the existing footprint.

Mr. Provencal said they sometimes use that as a condition.

Ms. Bialobrzkeski said if the Board grants 1.3 without any conditions approval will be given to what is on these plans.

Chairman O'Brien said last year the Applicants were granted relief for the deck. It now looks larger on the plans. Mr. MacGuire said they are now proposing a larger footprint.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Ms. Bialobrzkeski to grant Petition 04-22 conditional as to limiting the expansion to the existing building footprint.

Mr. MacGuire said that was not what they were asking for.

There was no second to the motion.

**Moved** by Mr. Provencal, seconded by Ms. De Vries, to grant Petition 04-22 with the condition that there is a positive recommendation from the Conservation Commission.

Mr. McGuirk said in spirit they have met the five criteria. There was incorrect information from the Town.

Ms. De Vries withdrew her second. Mr. McGuirk then seconded Mr. Provencal's motion.

Chairman O'Brien asked the Board if they felt the five criteria had been met. Chairman O'Brien, Mr. Provencal and Mr. McGuirk said that they had. Ms. Bialobrzkeski said they had not and Ms. De Vries abstained.

**Vote:** 3 yes, 1 no (Bialobrzkeski), 1 abstention (De Vries). Motion passed.

**Moved** by Chairman O'Brien, seconded by Mr. McGuirk, to take a 5 minute break.

**Vote:** 5 yes, 0 no. Motion passed unanimously.

The meeting resumed.

At this time Ms. Bialobrzkeski stepped down from the Board and Ms. Collins stepped up.

**07-22...**The petition of Thomas Breslin and Jennifer Foster for property located at 24 Walnut Avenue seeking relief from Article(s) 4.5.1 front setback, 4.5.2 side setback, and 1.3 expansion of non-conforming use to demolish existing non-conforming one-story cottage and replace with new more conforming two-story home. This property is on Map 223, Lot 1 and in the RB Zone.

Thomas Breslin and Michelle Shields came forward. Ms. Shields said this is a very small home. It is less than 900 s.f. The Applicants are looking to expand and improve the right side setback. Off street parking will be provided. This will not go into the tidal buffer. Year round living will be provided. Ms. Shields went through the five criteria and said she 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*

Chairman O'Brien asked if the tree near the parking space to the right will be cut down.

Mr. Breslin said they had not planned to do that. There is adequate room to park a vehicle.

**Moved** by Mr. McGuirk, seconded by Ms. Collins, to grant Petition 07-22.

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

**Vote:** 5 yes, 0 no. Motion passed unanimously.

At this time Ms. Collins stepped down from the Board and Ms. Bialobrzkeski stepped up to the Board

**08-22...**The petition of James & Melissa Patterson for property located at 20 Hedman Avenue seeking relief from Article(s) 4.5.2 side setback, 4.5.3 rear setback. During the height of closures due to Covid our shed was delivered earlier than anticipated and built in place while we were at work. We had previously instructed the vendor to install in back corner near tree. They placed the shed behind instead of beside the tree. This property is on Map 193, Lot 6 and in the RA Zone.

James and Mellissa Patterson, Applicants, came forward. Chairman O'Brien noted that technically the Applicants could have come for an Equitable Waiver, but they have come for a variance instead. Ms. Patterson went through the five criteria and said she felt they had been met.

*Questions from the Board*

Ms. De Vries asked if Aquarian had been notified. Chairman O'Brien said that they had.

Ms. De Vries asked if they could move the shed back where it was supposed to be. Mr. Patterson said it would require a lot of work and the fence would have to be removed. Mr. Patterson said the neighbors like the shed where it is. Mr. Patterson noted that they had originally filed for a building permit.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Mr. Provencal said the shed in its present location is not bothering anyone.

**Moved** by Mr. Provencal, seconded by Ms. De Vries, to grant Petition 08-22.

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

**Vote:** 4 yes, 1 no (Bialobrzkeski). Motion passed.

**09-22...**The petition of Jonathan Provost for property located at 131 North Shore Road seeking relief from Article(s) 4.5.2 side setback to replace existing 12' x 21' with an addition of the same dimensions. Addition will be one-story and serve as a dining room/sitting room. This property is on Map 133, Lotn 29 and in the RA Zone.

Jonathan Provost, Applicant, representing Mark Henderson, Owner, came forward. Ms. Bialobrzkeski said Mr. Provost should have presented a letter authorizing him to handle this petition. Chairman O'Brien noted that Mr. Provost is signed as the Applicant, but in any case he should present such letter authorization to the Building Department.

Mr. Provost went through the five criteria and said he felt they had been met.

*Questions from the Board*

Ms. Bialobrzkeski said there is no survey and she has no idea where the property lines are. However, since they did get a variance for the deck and this is within the existing footprint she would be in favor.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Ms. Bialobrzkeski, seconded by Ms. De Vries, to grant Petition 09-22 based that it will be within the existing footprint and there will be a 6" overhang.

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

**Vote:** 5 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk stepped down from the Board and Ms. Collins stepped up to the Board.

**10-22...**The petition of McGuirk's Ocean View, Inc. for property located at 95-97 Ocean Boulevard seeking clarification of prior decision. Seeking clarification that the Board's decision dated October 18, 2018 applies to the existing temporary cabana located on the property. This property is on Map 290, Lot 118 and in the BS Zone.

Tom McGuirk, Applicant, and Attorney Justin \_\_\_\_\_ came forward. Attorney \_\_\_\_\_ said four years ago this Board approved several variances to permit a commercial building. Phase approval was obtained from the Planning Board. Covid then happened and plans changed. The Planning Board said it was necessary to come back to the ZBA. Mr. McGuirk is working again with architects and the new construction will be a hybrid. He wants to keep the deck as it is now. The hope is that the ZBA will say that the variance received in 2018 still applies to the deck.

*Questions from the Board*

Chairman O'Brien asked if Mr. McGuirk was rethinking the site. Mr. McGuirk replied that it is going to be a revised building that will be similar. He said they will return to the ZBA for any changes. Chairman O'Brien asked if what they want the Board to do is give them permission to keep the setup they have now. Mr. McGuirk said yes.

Ms. Collins asked if the permission to keep this as it is now would be permanent. Attorney \_\_\_\_\_ said yes, but they have to file a new site plan in March 2023.

Chairman O'Brien said if there are any changes, prior variances will disappear.

Mr. Provencal said if they wanted to build what is there now the only thing they would need to do is cut the deck off and put pavers in. They would not need to come back to the ZBA. They would only need a building permit.

**Moved** by Mr. Provencal, seconded by Ms. De Vries, to grant Petition 10-22.

Chairman O'Brien asked the Board if the five criteria had been met. All members agreed that they had with the exception of Ms. Bialobrzkeski.

**Vote:** 4 yes, 0 no, 1 abstention (Bialobrzkeski). Motion passed.

At this time Ms. Collins stepped down from the Board and Mr. McGuirk stepped up to the Board.

## **BUSINESS SESSION**

### **Approval of Minutes**

**Moved** by Mr. Provencal, seconded by Ms. Bialobrzkeski, to approve the Minutes of January 20, 2022

as amended.

**Vote:** 5 yes, 0 no. Motion passed unanimously.

### **Adjournment**

There being no further business, the meeting was adjourned at 9:43 p.m.

Respectfully submitted,

Joan Rice  
Secretary