

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES – Draft
April 15, 2021
Teleconference Meeting

Members Present

Bryan Provencal, Chairman
Anne Bialobrzkeski (via teleconference)
Erica De Vries (via teleconference)
Tom McGuirk
Bill O'Brien

Chairman Provencal called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman Provencal said that this meeting is being conducted electronically pursuant to the Governor's Emergency Order. A teleconference will be utilized for this meeting and the public may join in.

Chairman Provencal introduced the members of the Board.

PETITION SESSION

06-21...The continued petition of Edmund B. Kelty, II, Rosa F. Kelty and John P. Kelty,II for property located at 11 Redman Street seeking relief from Article(s) 1.3; 4.5.1; 4.5.2 and 4.5.3 for reconfiguration of an existing one-family into a more livable home. The condominium has been approved and recorded by the Town. The request is to replace the existing one-bedroom 576 sq. ft. camp in LCA 3 with a more livable 2-bedroom home with better parking and setbacks, and in compliance with the sealed surface requirement. This property is on Map 210, Lot 47-2d and in the RB Zone.

Attorney Peter Saari, Casassa & Ryan, said this is a one-bedroom camp and really does not fit into the neighborhood. The difference in size affects value of surrounding properties. The applicant wants to increase the front and rear setbacks and be in compliance with the sealed surface requirement. Attorney Saari 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

Ms. De Vries said this is a pretty aggressive incursion into the setbacks. Mr. O'Brien said he agreed and asked if they could move the house further off Pearl Street. Attorney Saari said they could do that. Mr. McGuirk said if you do that you will lose parking. Mr. McGuirk said this would cause more harm than good by eliminating parking.

Moved by Mr. McGuirk, seconded by Chairman Provencal, to grant Petition 06-21.

Chairman Provencal asked the Board if they felt the five criteria had been met. Ms. Bialobrzkeski and Ms. De Vries said no. Ms. Bialobrzkeski said she did not see enough hardship to justify.

More discussion followed. Mr. O'Brien asked if the stairs on the side are needed. Attorney Saari said they were. They could however be moved to the back of the garage. Mr. Kelty said that would work.

Mr. McGuirk withdrew his motion and Chairman Provencal withdrew his second.

Moved by Mr. McGuirk, seconded by Chairman Provencal, to grant Petition 06-21 with the stipulation that the side stairs are removed and hold the 4.88 feet setback from Pearl Street.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had with the exception of Mc. Bialobrzkeski

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

16-21...The continued petition of Maura Pare Family Trust Agreement c/o Maura G. Pare & Christine Pelkey for property located at 1 Dumas Avenue seeking relief from Article(s) 1.3; 4.5.1; 4.5.2: 4.5.3 to demolish the existing home and replace it with a new home. This property is on Map 256, Lot 1 and in the RA Zone.

Henry Boyd, Millennial Engineering, said they have some issues with a title perspective that has come about since this application was submitted. He said they are not looking for approval until this matter is resolved. Mr. O'Brien asked how long it would be until it is resolved. Mr. Boyd said he was not sure. Attorney James Scully said they may end up withdrawing, but he would like to present the application.

Mr. Boyd said this property is oddly shaped and resulted from a land swap between the Town and the Pares. The State of NH is one of the abutters and is concerned because there is an encroachment. This amounts to about 320 s.f. There are no plans to build anything on this area. Also the patio in back is partially on an abutter's property. The new structure will have a larger footprint and needs setback relief on all sides.

Mr. McGuirk said he could not see this being approved. Mr. O'Brien said he felt they also need relief from 3.3 which is that two-family is not allowed in the RA Zone.

Attorney Scully said they would like to withdraw.

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to allow Petition 16-21 to be withdrawn.

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

20-21...The petition of Kathleen Sacco for property located at 20 Bradstreet Road seeking relief from Article(s) 4.8a to place shed in backyard 6' x 8' rear middle of property on top of hill. This property is located on Map 193, Lot 36 and in the RA Zone.

Kathleen Sacco, Applicant, said she needs a shed for storage. She 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

Moved by Ms. Bialobrzkeski, seconded by Mr. O'Brien, to grant Petition 20-21.

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

Roll Call Vote: 5 yes, 0 no. Motion passed unanimously.

21-21...The petition of Stephen & Patricia Reichle for property located 15 Battcock Avenue seeking relief from Article(s) 4.5.1 (front setback) requesting 9.0 feet where 20 feet is required, and 4.5.2 (side setback) requesting 8.4 feet on South side where 10 feet is

required. The existing structure will be lifted to a height where the existing foundation can be demolished and a new foundation installed. A new first floor will be constructed on the new foundation and the existing structure that was lifted will become the second floor of the house once it is lowered onto the new structure. The existing foundation will be extended by adding an 8.1' x 4.8' section on the northwest corner and the porch at the rear of the house will be extended 1.0' towards the back property line. This property is located on Map 281, Lot 58 and in the RB Zone.

Stephen Reichle, Applicant, said they want to take the existing house and raise it and construct a new first floor. This will create more living space and make better use of the property. There will be a positive impact on neighboring property values. Mr. Reichle went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski asked the Applicant if he was aware that he is going to need a State Wetlands permit. Mr. Reichle replied that he has talked to the Building Inspector and they are okay in that regard. Ms. Bialobrzkeski said this application is based on the old flood maps and will need to be updated.

Ms. De Vries asked if in the front setback they were going within 9 feet of the property line. Mr. Reichle said that was correct. Ms. De Vries asked if they were going to 9.8 feet on the side. Mr. Reichle said that was correct and the existing setback will be maintained.

Comments from the Audience

Henry Boyd, Millennial Engineering, said the plans were produced before the new flood maps. The building plan should be updated. Additional survey help is also needed.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to grant Petition 21-21.

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

Roll Call Vote: 5 yes, 0 no. Motion passed unanimously.

22-21...The petition of Eugene P & Gabrielle E Borden for property located at 12 Thayer Road seeking relief from Article(s) IV, Table II, 4.1 and 4.1.1 for lot line adjustment is proposed to cure an existing encroachment. Applicant Borden seeks to convey a small area of land to Haraden. This property is located on Map 107, Lot 15 and in the RA Zone.

Stephen Haraden said they are looking for relief on a lot line which is an existing encroachment. Both parties have agreed to this adjustment. Mr. Haraden 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.

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Back to the Board

Moved by Ms. Bialobreski, seconded by Mr. O'Brien, to grant Petition 22-21.

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

Roll Call Vote: 5 yes, 0 no. Motion passed unanimously.

23-21...The petition of John Anthony Simmons Revocable Living Trust; John Anthony & Amy Simmons Trustees for property located at 886 Lafayette Road seeking relief from Article(s) 2.3.2A.8; 2.3.4.B; 3.37; 4.5.2; 1.3 and 6.3.3 to demolish existing structure and construct a new office and attached dwelling unit. Applicant is also seeking to add a parking area in the rear of the lot. This property is located on Map 71, Lot 3, and in the B Zone.

Henry Boyd said the existing building has been there for decades and is in need of repair. This proposal will have parking in the rear. The building will be smaller and sealed surface will be reduced. Attorney Scully then went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobreski asked if they were asking for a rental unit. Attorney Scully said yes. Mr. O'Brien asked if this was below ground level. Chairman Provencal said you need four feet

to get out of a window and this is not there. James Marchese, Building Inspector, said since September of 2020 living spaces in basements are required to have an egress window. Mr. McGuirk asked if egress is needed just out of the room or out of the building. Mr. Marchese said it must be out of the building.

Ms. De Vries asked if they were proposing 1.4 feet off the setback because they were using part of the existing foundation. Attorney Scully said that was partially true and also because they want to make the access on the other side as wide as possible. Ms. De Vries said they could take down the billboard. Attorney Scully said that could not happen. Ms. De Vries said the building could be moved further in. Attorney Scully said you could but there is not a lot of room.

Mr. O'Brien said he was not seeing a hardship. The billboard is a self-induced hardship. Chairman Provencal said even if the billboard was taken down it would be hard to move the house at all. The wetlands have to be considered.

Ms. Bialobrzkeski asked how much parking relief they were asking for. Attorney Scully said they don't believe relief is necessary for parking.

Chairman Provencal said he felt they should rehab the building and not have an apartment. Mr. McGuirk asked if the building could be pushed back to the wetlands buffer. Attorney Scully said that would cause the loss of parking spaces. Ms. Bialobrzkeski said the Applicant is asking for too many things.

Mr. McGurik said there has to be a plan better than this one.

At this time Attorney Scully said he would request to continue.

Moved by Ms. Bialobrzkeski, seconded by Chairman Provencal, to allow Petition 23-21 to be continued next month and be last on the Agenda (per Mr. O'Brien).

Roll Call Vote: 4 yes, 1 no (McGuirk). Motion passed.

24-21...The petition of Steven Seuss for property located at 14 O Street seeking relief from Article(s) 1.3; 4.5; 4.5.2; 4.5.1 to raise building, add concrete footings and wall. Add knee wall to top of concrete wall to add full 1st floor. No increase to footprint of original structure. This property is located on Map 266, Lot 29 and in the BS Zone.

Attorney James Scully said the Applicant's proposal is to raise this into the proper flood elevation. This would require bringing it up four feet. The home has been raised at this time. There is also a small overhang which encroaches on a neighbor's property. This will be corrected. The foundation is in the ground. Attorney Scully went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski said the Applicant does not own the land. This cannot be done without the prior approval of the Board of Selectmen.

Henry Boyd said the plan has not been updated. The Applicant got a permit from the Building Inspector.

Mr. McGuirk asked if they were directed to raise it above the flood zone. Mr. Marchese said they were. Mr. McGuirk said they should have received a letter regarding this when the new foundation was put in. Mr. Marchese said he was not aware of this letter going to the Applicant. Mr. McGuirk said you cannot claim a new foundation as a hardship.

Mr. O'Brien said he would have told the Applicant to make it equal to the lot line and set it back a bit.

Ms. Bialobrzkeski asked if they are asking for a variance to add a story. Chairman Provencal said they are asking if they can add a floor. This is already out of the bag and they were not given the letter. Ms. Bialobrzkeski said she could not support this without Board of Selectmen approval. Chairman Provencal said if they had been given the letter he would say move the house. Chairman Provencal asked if the foundation was 100% done. Mr. Marchese said it was.

Ms. De Vries asked about procedure. Attorney Scully said this should go before the ZBA before going to the Selectmen. Mr. McGuirk said if it is leased it should go to the Board of Selectmen first.

Attorney Scully said they would like to withdraw at this time.

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to allow Petition 24-21 to withdraw without prejudice.

Roll Call Vote: 5 yes, 0 no. Motion passed unanimously.

25-21...The petition of MAM Realty Investors 1, LLC for property located at 449 Ocean Boulevard seeking relief from Article(s) 1.3; 4.1.1; 6.3.1; 6.3.10; 6.4.2; 8.2.5 to convert the existing "Sea Spiral Suites" Hotel into thirty-seven (37) condominiums. There will be an assortment of studio and one-bedroom units. The existing hotel had 49 units, so this will be a 12-unit reduction. This property is located on Map 266, Lt 31, 32, 33 and in the BS Zone.

Attorney James Scully said this structure has existed for some time. This is an attempt to make some improvements. The outside will remain relatively unchanged, They will be going from 49 units to 37. Parking will be improved and be much safer. Weekly rentals will still be allowed. The unique character of the Sea Spiral will be maintained. Currently 64% of parking is non-conforming. This will be reduced to 25%. Two handicapped spaces will be added. Attorney Scully went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski asked why there wasn't an Existing Conditions Plan. She said there is not enough information for her.

Ms. De Vries asked if there was already an application filed with the Planning Board. Joe Coronati, Jones & Beach, said there was. Ms. De Vries asked if this was a change-out and not a conversion. Chairman Provencal said no. This is just a different type – hotel to condo.

Mr. O'Brien asked how many guest parking spots are needed for parking. Attorney Scully said as a condo conversion, none are needed.

Mr. McGuirk said that currently spaces are rented across the street. He asked if they could continue to do that. Chairman Provencal said the State only rents to businesses. Mr. McGuirk said since this lot is not across from the beach, spaces are usually available.

Mr. O'Brien asked how many of the 37 spaces are legitimately 9' x 18'. Attorney Scully said there will be 10 spaces that will not be 9' x 18'. Three will be 8' x 8' wide. The remaining 7 will be 9 feet wide.

Mr. McGuirk said the Planning Board will take care of much of the parking issue.

Ms. Bialobrzkeski said there is not a consensus about what type of relief is needed.

Comments from the Audience

There were no comments from the Audience

Back to the Board

Ms. Bialobrzkeski asked how many of the 37 units will be considered to be dwelling units. Attorney Scully said all 37 would be considered as such.

Moved by Chairman Provencal to grant Petition 25-21 with the stipulation that the owners of the condos retain the right to rent their units, yearly, monthly, weekly and nightly.

There was no second to the motion.

Chairman Provencal withdrew his motion.

Moved by Mr. McGuirk, seconded by Chairman Provencal, to grant Petition 25-21 with the stipulation that these units can be rented weekly if so desired.

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

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

26-21...The petition of RJS Consulting, LLC for property located at 465/467/469 Ocean Boulevard seeking relief from Article(s) 2.3.7.C.1; 2.3.7.C.2; 4.1.1; 4.4; 8.2.5 to demolish the structure on 467 Ocean Boulevard, merge 465 and 467 Ocean Boulevard and construct an eight-unit residential building. The access way that exists between 467 and 469 Ocean Boulevard will be abandoned for 469 Ocean Boulevard. This property is on Map 266, Lot 31, 32, 33 and in the BS Zone.

Attorney James Scully said this had been granted variances previously to do a similar project on 465 and 467. An abutter then filed a Motion for Rehearing which was denied and subsequently filed a pending case in Superior Court. Since then all involved have come to a basic agreement after lengthy discussions. If this petition is granted the prior variances will be withdrawn and the lawsuit against the Town will go away. Attorney Scully went through the five criteria and said he felt they had been met.

Joe Coronati, Jones & Beach, said previously the driveway was on the right side. It will now be on the left side.

Questions from the Board

Ms. Bialobrzkeski asked if the suit has been withdrawn. Attorney Scully said there is an agreement in place that should this Board agree on the petition, the lawsuit will be dropped.

Mr. O'Brien asked about the height of the building. Attorney Scully said it is 58.5 feet and has been reduced from 61 feet. Mr. O'Brien asked if they were only asking for the first sentence of 8.2.5. Attorney Scully said that was correct.

Comments from the Audience

David _____, abutter, said he was in favor of the project.

Back to the Board

Ms. De Vries asked about the hardship. Chairman Provencal said it is the elevator shaft.

Ms. Bialobrzkeski said she will be opposed for the same reasons as last time. They are taking away all of the open space on every lot. The reason building height relief is needed is because you are having four more units than you are allowed. She said she felt this is a double variance.

Moved by Chairman Provencal, seconded by Mr. McGuirk, to grant Petition 26-21 with the stipulation that no lighting relief is granted and that Applicant must vacate the last variances and the lawsuit must be withdrawn.

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

Roll Call Vote: 3 yes, 2 no (Bialobreski, De Vries). Motion passed.

27-21...The petition of Robert F Preston/Charlie Preston for property located at 65 Ocean Boulevard seeking relief from Article(s) 11.5; `11.5.a to allow food truck with all state and town requirements. This property is located on Map 293, Lot 104 and in the BS Zone.

Charlie Preston, Applicant, said they would like to have a food truck on their property. He noted how this would be appropriate for those who do not yet feel safe dining inside restaurants. Mr. Preston went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. O'Brien asked about a food truck parked on Town property. Chairman Provencal said it was a non-profit. The zoning ordinance does not apply to the municipality. Mr. Marchese said that was correct.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Ms. Bialobrzkeski said that since the rule in the zoning ordinance is that we cannot have food trucks, she does not think she can be in favor of this. If it dispensed food and was on a foundation then a plan of the lot would be needed.

Ms. De Vries said the ordinance is clear and she did not see that she could be in favor.

Chairman Provencal said if this were allowed the food truck could be parked anywhere and interfere with the business of other restaurants.

Chairman Provencal said he was not in favor of a food truck at the beach. The reason for the ordinance is to protect the brick and mortar businesses.

Chairman Provencal said if this petition is denied, Mr. Preston could go for a Motion for Rehearing. However, that would require new evidence. He can also appeal to Superior Court. Mr. McGuirk said the Planning Board could also put it forward as a warrant article.

Moved by Chairman Provencal, seconded by Ms. Bialobrzkeski, to deny Petition 27-21.

Roll Call Vote: 3 yes, 0 no, 2 abstentions (McGuirk, O'Brien). Motion passed.

BUSINESS SESSION

Approval of Minutes

Chairman Provencal said the Minutes of March 18, 2021 will be addressed at the next meeting.

Adjournment

Moved by Mr. O'Brien, seconded by Ms. De Vries, to adjourn the meeting at 11:23 p.m.

Respectfully submitted,

Joan Rice
Secretary