

**HAMPTON PLANNING BOARD**

**MINUTES**

**February 2, 2022 – 7:00 p.m.**

**PRESENT:** Tracy Emerick, Chair  
Alex Loiseau, Clerk  
Brendan McNamara  
Ann Carnaby (Remote/Telephonically)  
Keith Lessard  
James Waddell, Selectman Member  
Steve Chase, Alternate  
Jason Bachand, Town Planner  
Laurie Olivier, Office Manager/Planning

**ABSENT:**

**I. CALL TO ORDER**

Mr. Emerick commenced the meeting by leading the Pledge of Allegiance and introducing the Planning Board members. Planning Board member, Ann Carnaby, was at home; no one was present with her – she was advised to avoid indoor spaces with people unmasked. All other Board members were present in the Selectmen’s Meeting Room. It was noted that all votes must be taken by roll call.

It was noted that the applicant for 132 Kings Highway wishes to be continued to March 2, 2022.

**MOVED** by Mr. McNamara.

**SECOND** by Mr. Waddell.

**ROLL CALL VOTE: 6 – 0 – 0**

**MOTION PASSED.**

**II. ATTENDING TO BE HEARD**

**III. NEW PUBLIC HEARINGS**

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**22-004 571 Winnacunnet Road (Sandpiper Bay Condominiums**

Map: 235 Lot: 11

Applicant: Dennis Eary, President Sandpiper Bay

Owners of Record: See \*

Wetlands Permit: Emergency/After the Fact: - Installation of erosion control coir logs on eroding salt marsh. Coir lots used to protect the valuable functions of the salt marsh and preserve integrity and health of the salt marsh by stopping erosion

\*Mary Angela 2016 Nom Trust; Matthew & Debra Sutton, Paulina Kallas; Linda Dionne, William Reddy Rev Trust; Justin & Tara Jumper; Glenn Reiser; Francis & Katherine Enwright; Elaine DiBenedetto-Johnson Rev Trust; John & Marilyn Lanen; Edward & Kathleen Sienkiewicz; Michael & Denise Howard; Francis & Heidi Daley; Princess Rental Holding Trust; Dennis Eary & Leslie O’Shea; Maureen & Jean Schneider.

Mr. Peter Senkiewicz appeared. He is on the Condominium Board. His legal name is Edward. This is for approval for an after-the-fact permit for emergency-authorized work. He met with the Conservation Commission, and they gave their recommendation for approval. He stated he concurs with the conditions.

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**MOTION** by Mr. McNamara to approve the Wetlands Permit along with the stipulations contained in the Conservation Commission letter dated January 26, 2022.

Mr. Senkiewicz said it will meet State standards.

**SECOND** by Mr. Loiseau.

**ROLL CALL VOTE: 5 – 0 – 0 (Carnaby – teleconference problems) MOTION PASSED.**

**22-005 14 Dover Avenue**

Map: 296 Lot: 154

Applicant: Susan and Ryan Salame

Owner of Record: Same

Condominium Conversion: Conversion of two structures into condominium form of ownership. One building consists of a single-family dwelling; one structure consists of two, single-family dwelling units.

Waiver Request: Section V.E. Detailed Plans.

Attorney Eugene Geary from the Morris Law Office appeared. He noted that Building #1 is a stand-alone building and Building #2 has two single-family dwelling units. They want the three units to be changed to condominium form of ownership. There will be no structural changes. This is a benefit to the Town. They are in receipt of the Town Planner’s Memorandum and they are in agreement. Attorney Geary discussed shared utilities on Building #2. The previous owner planned to have separate and distinct utilities. They will have a separate gas meter.

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Attorney Geary discussed parking. Parking is improved. They put in a garage. The back units have two distinct parking spaces.

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Mr. Bachand agrees the parking has been improved. Mr. Bachand asked about the second floor – “the door to nowhere”. He spoke with the Building Inspector. There is another phase of work going on. Prior to recording of the condominium documents and plan, that needs to be completed first. Attorney Geary concurred.

Mr. Bachand discussed the front area; landscaping/green space. Attorney Geary said he believes the applicant plans to beautify the property. Mr. Bachand said vehicles should not park in a manner that overhangs into the right-of-way.

There is waiver request of the detailed plan requirement. Mr. Bachand recommends approval of the conversion with the conditions in his Memorandum dated February 2<sup>nd</sup>, but adding a condition that all front building improvements, including addressing the door (above the garage) on the second floor, be completed prior to recording the plan and documents.

**MOTION** by Mr. Loiseau to approve the waiver.

**SECOND** by Mr. Waddell.

**ROLL CALL VOTE: 5 – 0 – 0 (Carnaby- teleconference problems) MOTION PASSED.**

**MOTION** by Mr. Loiseau to approve the condominium conversion with the Town Planner’s Memorandum conditions, as amended.

**SECOND** by Mr. Waddell.

**ROLL CALL VOTE: 5 – 0 – 0 (Carnaby- teleconference problems) MOTION PASSED.**

Keith Lessard arrived for the meeting and was seated.

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**22-006            95 & 97 Ocean Blvd & 4 & 25 J St.**

Map: 290 Lot: 116,117,118 & 137

Applicant: McGuirk's Ocean View, Inc.

Owner of Record: McGuirk's Ocean View, Inc.

Modification of Amended Site Plan Approval: Applicant is requesting the removal of Condition #3 of the March 4, 2020 Amended Site Plan Approval, which reads as follows: *The Phase I improvements (temporary cabana/beach bar, decking, and other associated structures) shall be removed from the site no later than December 31, 2021, or with the expiration of the clarified ZBA approval (and any subsequent extensions thereto), whichever is sooner. Applicability of Condition #8 to be reviewed.* Additionally, the applicant is requesting an extension of the Amended Site Plan Approval to March 4, 2023.

Mr. Tom McGuirk appeared with Attorney Justin Pasay. This is to amend the site plan to remove Condition #3 of the March 4, 2020 approval, and to extend the approval to March 4, 2023. He summarized the variance granted in October of 2018. Merging the properties was discussed. Side setback relief was needed. There was Planning Board approval. Mr. McGuirk did the final design and pulled a Building Permit to build a cabana and deck. In 2020, he appeared for an Amended Site Plan. This is a phased approval.

Mr. Lessard recused himself from this application.

Condition #3 required removal of the cabana by December 31<sup>st</sup> of last year. Condition #8 required Mr. McGuirk to go back to the ZBA regarding side setbacks. Mr. McGuirk had a discussion with the ZBA, but it was not done in a public hearing. They filed this now with the ZBA. They hope to get clarification.

Attorney Pasay discussed the atmosphere before COVID. Now that COVID is here, it is important as a local business to serve people outside. He noted #3 is for this basis. At this point, it (the overall project) is still being designed. Mr. McGuirk will sit with TMS Architects. He will come back to this Board with a new plan. The existing plan will be withdrawn.

Attorney Pasay said they want to continue this for one year; and talk to the architect.

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Mr. Waddell said the reasons are valid. COVID is still prevalent. There is a new law that local authority can allow outdoor dining.

Mr. Bachand discussed the prior application and the cabana. It was contentious in the past. There were discussions about the structure and how it came to be. He appreciates there will be a new plan. He supports the idea of leaving the cabana there longer. He does not support

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removing the condition and having it (cabana) be there in perpetuity. Mr. Bachand said we are looking forward to a great project. In 2024, Mr. McGuirk could come back to discuss this. Leaving it in its entirety is what Mr. Bachand wants until 2024, or, unless the ZBA asks for it to be removed sooner--if there is a compliance issue. The one-year extension is no problem. He recommends allowing this until December 31, 2024 unless the ZBA requires something otherwise, and all other conditions are to remain in full force and effect.

Attorney Pasay discussed Conditions #3 and #8. The cabana and the bar is a permitted use. It has jurisdiction of the 4' of the deck through the ZBA. Mr. McGuirk may have to cut 4' back off the deck. They are still subject to the site plan.

Mr. Emerick is confused why this is a problem. Mr. Waddell said they have to come back with a new plan. Mr. Bachand said the cabana was intended to be the temporary first phase of a two-phase project; this was never intended to be permanent. Mr. Bachand thought giving three full beach seasons is generous; it gives time to go through the planning and permitting process. The application can be stalled beyond 2024. Mr. Emerick said ultimately it will come out. Mr. Chase said we don't know what the site plan will look like right now. We have given an extension already. It ensures they will come back with a valid plan. Mr. Emerick said if they come back with this still on the plan, does the new plan trump this. Mr. Bachand said the new plan should note the cabana as temporary. If there is a new approval, then this one is voided.

Attorney Pasay wants to keep options. Some portion may be preserved. At that time, per Mr. Chase, we can address it. Mr. McNamara asked how quick they will come back with a new site plan. Mr. McGuirk said he has no idea. We are giving them until December of 2024. It can be remaining on site until no later than December of 2024. Mr. McNamara said we are putting up a roadblock. If it has to be ripped out by the end of 2024, we are putting up a roadblock. Mr. Chase said that gives enough time for them to come back with a site plan. Mr. Chase said when it was issued, it was temporary. Mr. Waddell agrees with Mr. McNamara. Mr. McNamara discussed the applicant saying he may incorporate it; he may not.

Mr. Bachand said what is there today is a temporary cabana. That is what the Board approved. They are now asking to make it permanent. What if they never do the (larger) project was asked. Mr. Bachand said this is not how it was presented. Mr. Bachand noted that he himself and Attorney Pasay discussed this being proposed as an extension of the condition (not the removal of it) in December of last year.

Attorney Pasay said there should be flexibility. Mr. Chase said when they brought the plan forth in 2020, it was temporary and now they are asking for it to become permanent, but we have not gotten a new site plan to review. If you look at the project history, it is supposed to be a building, not a cabana. Phase One was approved as temporary.

Mr. Loiseau asked if temporary structures can become permanent. Mr. Chase thinks that would be what is needed.

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Mr. Chase said they have to come back with site plan. If we remove the condition, and they don't want to come back with a site plan, it will never be reviewed as a site plan.

It was supposed to be a building. We approved Phase I as temporary. Mr. Emerick has no problem having it become permanent. Mr. Chase said if we set a date to two years out, they will come back with a plan. Mr. Bachand said the original approval was phased because the intent was for its removal. It already is an after-the-fact situation. There was a Building Permit, but it was after-the-fact from this Board. The Board was accommodating accommodated in saying we will call it Phase I, but it will need to be removed so they can construct Phase II.

Mr. Waddell said they did what they could do in Phase I. Mr. McNamara said the applicant maybe would have come for this in the first place. They put it up before they came for a (Planning Board) permit per Mr. Chase.

**MOTION** by Mr. Loiseau to approve with the Planner's memo (dated February 2, 2022) but removing Item #1 (re: cabana) from the conditions.

**SECOND** by Mr. Waddell.

**ROLL CALL VOTE: 5 – 1 (Chase) – 0**

**MOTION PASSED.**

**IV. CONTINUED PUBLIC HEARINGS**

**21-043 132 Kings Highway (Units 1 & 2)** (continued from September 1, 2021, October 6, 2021, and December 1, 2021)

**NOTE: CONTINUED TO MARCH 2, 2022**

Map: 183 Lot: 30A

Applicant: Gary and Gail MacGuire, Trustees

Owners of Record: MacGuire Family 2020 Revocable Trust (Unit 2) and Eddy and Kathleen (Fleming) Clemente (Unit 1)

Wetlands Permit: Replace the existing decks on the duplex units with enclosed space. All improvements to occur within the limits of the existing decks and existing developed lawn area.

**21-019 61 High Street** (continued from April 7, 2021, May 5, 2021, June 2, 2021, July 7, 2021, Sept. 1, 2021, Oct. 6, 2021, Nov. 3, 2021, and January 5, 2022)

Map: 161 Lot: 17

Applicant: Shane Pine

Owner of Record: GMC Group Limited Partnership

Site Plan (Amended): Propose to make outdoor patio space (previously approved for Covid-19) permanent.

Waiver Request: Section V.E. Detailed Plans.

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Attorney Pasay appeared with Shane Pine. Henry Boyd, Millennium Engineering was present. He is generally in accord with the Town Planner's Memorandum. He will discuss fire and egress issues later.

Mr. Boyd, Millennium Engineering discussed the site plan. There was a sealed surface issue. Snow storage was discussed. Mr. Pine worked with the Fire Protection Officer. Egress was discussed and emergency egress. Mr. Pine has worked with the neighbor to the west so they can pass through the existing fence; there will be a push gate through the fence--only for emergencies. There will be no access into Shane's. There will be directional arrows. Trash pick up was discussed. There are typos on the plan per Mr. Boyd. Notes about hours of operation were discussed. Conditions 2 and 6 of Mr. Bachand's Memorandum should be discussed.

Attorney Pasay said #2 deals with emergency egress. There is a license agreement. It is a revocable license. It is not in a form to get recorded. Attorney Pasay thinks it should be required annually to provide a certification in writing to the Board of Selectmen that the license has not been revoked.

The noise issue was discussed. Number 6 imposes initial requirements to minimize noise from live entertainment and speakers. Additional sound mitigation was discussed. Mr. Pine has done noise mitigation. Sound deadening material was discussed. The Select Board deals with noise. Attorney Pasay read aloud what he wants the condition to state.

Attorney Pasay thinks this deals with existing law in Hampton. If there are issues with abutters, it should go to the Select Board.

Mr. Bachand discussed #2. Mr. Bachand said he thinks the Registry would take the document if a cover page is added that fits their criteria. However, it is up to the Board.

Mr. Lessard said we need Fire Prevention to talk about this. Safety needs to be shown as it is provided at the site. Fire may want it recorded. It is about life safety. Mr. Lessard wants a life safety officer to be comfortable with this. Mr. Bachand said Condition #7 talks about requiring a final review and sign off by the Fire Department, DPW and Planning.

Mr. Waddell said if it is recorded like a Deed, and if it is a license, it could mess up a sale. He thinks a license will do the trick. It will need an annual update.

Mr. Bachand said to strike recording but leave the rest. Mr. Bachand discussed #6. Mr. Lessard said the fire emergency egress area needs to be shoveled out after every storm. It is in the snow storage area for the parking lot. **That should be noted on the final plan per Mr. Bachand.**

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Mr. Bachand discussed #6. The first part, it coincides with what the applicant is representing. Having a loud band near a residential area was discussed as a problem. Speakers are allowed out back. Mr. Bachand said the language highlighted in his memo is verbatim to another application that the Board recently heard.

Mr. Bachand discussed the hours of operation. It is up to the Board. Attorney Scully presented different hours. Attorney Pasay discussed residents calling in a complaint for noise. The health, safety, and welfare of residents is in the Planning Board's purview; The Board of Selectmen do deal with noise complaints.

Mr. McNamara discussed noise complaints to violations (a prior applicant).

Mr. Lessard discussed people having an issue with noise. Mr. Waddell said they would have to call the police; decibels are checked out.

Attorney Pasay discussed the hours. They should be able to go until 11:59 p.m. on weekends and during the week until 11:00 p.m.

Ms. Carnaby said this is in the Town Center-Historic. A little more stringent hours may be applied since entertainment is not allowed in the TC-H District at all. Weekdays were going to be limited to no music after 9:00 p.m. That seemed reasonable. There will be more residences across the street in the future.

It is a different district. Mr. Bachand said the prior Building Inspector gave the interpretation that this is allowed. He discussed the prior Building Inspector's letter from April 22<sup>nd</sup> of last year. Mr. Bachand said 2.8 was cited in the Ordinance. Mr. McNamara said one member said they can go later. Mr. Bachand said the hours are not related to the use.

Attorney Pasay said they can operate until 11 p.m. during the week and 11:59 p.m. on weekends.

Mr. Loiseau said a sound engineer was brought in for another project the Board heard. We are not making this applicant do this.

### PUBLIC

Karen Twomey, 40 Towle Avenue appeared. Her property abuts Shane's. She went to every Board and noted concerns about the noise. She is all for business. She wants the Board to consider the hours. She noted the woman next door has two little babies. It is amplified. If she



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closes her windows and doors, she still hears music. She asked the Board to please consider the hours of playing music.

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Mr. Waddell said he agrees with Ms. Twomey. However, three years ago, there was a noise ordinance and it passed. We have to live by the Ordinance. Mr. Loiseau said he wants to see how noise will be mitigated. He gets the time, but if they are not going to self-impose the noise issue, he wants to see how this will go.

Mr. Emerick discussed amplification. Acoustic guitar can be amplified; that turns it into an electric guitar. If acoustics are not plugged in, it's fine. If it is plugged in, then it is loud. Mr. Pine said they have to adhere to decibel levels. Mr. Lessard said maybe a sound engineer is needed on this like we did with the last application. Mr. Pine said he is only having one guy play versus a larger band. Mr. Lessard discussed what in the future will be played there. Mr. Lessard said the other applicant gave us a basis to judge it by. Mr. Loiseau felt like the other applicant was compromised.

Mr. Pine said he does not go above 70 decibels. Outside of his fence, he does not go above 65.

Mr. Emerick does not think we have authority to change the hours of entertainment. The warrant article passed per Mr. Waddell.

Mr. McNamara asked why the first time they agreed to 9:00 p.m. on weeknights. Mr. Pine said there was not an agreement. Mr. Pine currently stops music around 9:00 p.m. on weekdays. Ninety Nine percent of the time he will adhere to that. The one time he does an after-wedding party that extends later, he wants the capability to extend it later so he won't be called out on it.

**MOTION** by Mr. Waddell to approve with the conditions in the Planner's memo (dated February 2, 2022), to keep Condition #2, but strike "...and recorded at the Registry of Deeds unless the Registry will not accept said document". Condition #6 stays as is, along with the new underlined language, and striking the last sentence.

**SECOND** by Mr. Lessard and including acknowledgement that the Board of Selectmen take full responsibility for enforcement of the noise ordinance.

Mr. Lessard asked about amplified music. Mr. Waddell said to strike that sentence. It was noted that a vocalist is probably amplified as well. So that comes out.

**ROLL CALL VOTE: 6 – 0 – 1 (Loiseau)**

**MOTION PASSED.**

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**MOTION** by Mr. Lessard to approve the waiver of the detailed plan.

**SECOND** by Mr. Waddell.

**ROLL CALL VOTE: 6 – 0 – 1 (Loiseau)**

**MOTION PASSED.**

**V. CONSIDERATION OF MINUTES**

**MOVED** by Mr. McNamara to accept and approve the January 19, 2022 Minutes.

**SECOND** by Mr. Loiseau.

**ROLL CALL VOTE: 6 – 0 – 1 (Chase)**

**MOTION PASSED.**

**VI. CORRESPONDENCE**

**VII. OTHER BUSINESS**

- **Outdoor Dining Requirements**

Mr. Bachand discussed how many businesses are getting through difficult times by having outdoor dining. RSA 178:24 was given out. It needs local approvals. Some things would fall under the purview of the Board of Selectmen. This Board right now requires site plan approval for existing approved businesses to have outdoor dining. It can take a long time. This is the right approach for things to become permanent. That would go through the site plan process. If someone wants a tent for seasonal use or a temporary amount of time, there could be an easier way. Mr. Bachand spoke with the Town Manager about this. The suggested approach would establish a temporary transitional outdoor dining approval for private property, only for 2022, under the Planning Board jurisdiction. We would work on something to put into our site plan regulations after this year. A temporary outdoor dining application can be prepared to come to Board for its acceptance on March 2<sup>nd</sup>, which would give time for people to do this beginning in the spring of this year. This would be a good transition. The form can be modified. Certain Town Departments would need to sign off.

Mr. Emerick said outdoor dining has been extended for 2 years. Local jurisdiction. Mr. Bachand said, with this temporary application, we will want a sketch to show where a tent would be, etc.

Mr. Waddell said maybe we should extend it for two years. Mr. Bachand said it would need an annual renewal. Mr. Lessard asked about the expiration date - maybe October 31<sup>st</sup> of 2023. Mr. Bachand said even if we said 2023; the end of the year could be the expiration. Mr. Bachand said we can update the Site Plan Regulations after 2022. It should be by December 31, 2023. Ms. Carnaby is good with the end of the calendar year. Mr. Bachand will bring a completed application for first meeting in March. **Entertainment should be clarified on the application.**

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- **Reminder: Master Plan Community Conversation Series (*Pre-registration is required. For more details, please visit: <https://bit.ly/hampton-get-involved>*)**

Mr. Bachand reminded everyone of the Community Conversation meetings. The Natural Resources conversation went very well. We want more people to sign up and participate. Information is on the Master Plan website under the Town website: hamptonnh.gov. Please sign up in advance. The next session is Thursday of this week, with other sessions again on February 8<sup>th</sup>, February 10<sup>th</sup>, and February 24<sup>th</sup>.

- **Deliberative Session – Saturday, February 5, 2022 at the Hampton Academy Gymnasium**

This will be held on February 5<sup>th</sup> at 8:30 a.m. This Saturday. Mr. Bachand will present the Zoning Articles. We want a good turn-out. Mr. Waddell said that is when amendments can be made to warrant articles. People need to talk about it. It was noted that the Zoning Articles cannot be amended.

- **Planning Board Representative to Hampton Coastal Hazards & Adaptation Team (CHAT)**

Mr. Bachand noted the Board discussed this a couple of weeks ago. We need a representative. Ms. Carnaby nominated Mr. Lessard. Mr. Lessard thanked Ms. Carnaby. He noted he is up for re-election. What if he is not re-elected, and cannot represent. Other than that, if he is elected, he noted he can find the time to attend the meetings. Mr. McNamara said we can wait until after the election and go from there. Mr. Bachand attends these meetings anyway. We will wait until after the elections, but CHAT wants a Planning Board representative.

**VIII. ADJOURNMENT**

**MOTION** by Mr. Loiseau to adjourn.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**MEETING ADJOURNED: 8:43 p.m.**

Respectfully submitted,

Laurie Olivier, Office Manager/Administrative Assistant

**\*\*PLEASE NOTE\*\***

**ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.**

**MAY BE CONTINUED TO THE NEXT SCHEDULED MEETI**