

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
March 16, 2023**

Members Present

Bill O'Brien, Chairman
Nichole Duggan
Erica De Vries
Tom McGuirk
Greg Grady, Alternate

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

06-23...The continued petition of MT55 LLC for the property located at 696 Lafayette Rd. The applicant is seeking relief from Article(s) 2.5.4.A. Minimum lot size: Requirement is 13,333 Sq. Feet per dwelling unit in the Aquifer Protection District, proposed is 8,503.33 Sq. Feet. Section 2.5.4.B. Maximum lot coverage: Requirement is maximum of 25% impervious coverage in Aquifer Protection District. Proposed is 8,503.33 Sq. Feet per dwelling unit or 51.4%, Article IV Dimensional Requirements, Sec. 4.1.1: Requirement is 10,000 Sq. Feet per dwelling unit. Proposed is 8,503.33 Sq. Feet per dwelling unit. Article VI Section 6.3.11 Parking Requirements: The requirement is stacked parking to be counted as one space. The proposed is to count stacked parking as separate spaces. Article VIII Multi Family Dwellings Section(s) 8.2.3: Requirement is 40 feet between building and lot line. Proposed is Front 38.9 Feet, South 25.9 North 0.00 Feet, Garage Onsite 9.5 Feet. Section 8.2.4: Requirement is driveways and parking lots must be 25 Feet from the front and 10 feet from the side and rear. Proposed is Eastern portion 11.9 Feet. Section 8.2.5: Requirement is driveways and parking shall conform to construction specs. for new town subdivisions. Proposed is to permit existing parking and drive which may not meet Town Standards. Section 8.2.6: Requirement is Buffer of 20 feet along boundaries and building to be within 20 feet from the interior wedge of the buffer zone. Proposed is North side Multi

Family within 20 feet open space buffer, and North, East and South Side Multi Family within 20 feet setback open space buffer. The property is located on Map 126, Lot 4 in the B Zone.

Attorney Justin Pasay said they had been before the Board in November and due to several issues were not able to return until now. They have received a plan from Henry Boyd and have inspection scheduling receipts. Attorney Pasay said Mark Thomas bought this property in 2020 and has approximately \$200,000 into it.

There will be no change in appearance of this property if variances are granted. It is suitable for the neighborhood. It is a good sized lot. Attorney Pasay provided a table of the variances needed and gave an explanation of each. They have also included a Request for Relief on parking.

Mr. Boyd went over the plan and gave an explanation regarding the parking spaces. He said there will also be a recreation area. There is currently a violation of the setbacks. Regarding the commercial use of the building, people will arrive in the morning, take their equipment and leave for the day and then return at the end of the day.

Questions from the Board

Mr. Grady asked how long Mr. Thomas has been at this location. Attorney Pasay said he has owned the property since 2020.

Chairman O'Brien said in one place in the application it says there will be no discernable changes to the building exterior and in another place it says no changes, which is it? Attorney Pasay said it is no changes.

Chairman O'Brien asked for a description of how the second floor looks now. Mr. Thomas gave an explanation. Chairman O'Brien asked if they had subdivided the downstairs into two units. Mr. Thomas said that was correct.

Chairman O'Brien asked if the applicant realized that when you go to three units it is multi-family. Attorney Pasay said that he does. Chairman O'Brien said this would also mean sprinklers would be required. Attorney Pasay said this will come up at the Planning Board.

Ms. DeVries asked about the dimensional requirements in relation to the Aquifer Zone. Attorney Pasay said they have 1/3 more than what is needed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Ms. DeVries said she felt this was a classic case of trying to follow the code.

Chairman O'Brien asked if the first floor was inspected. Ms. DeVries asked if a permit was granted. Attorney Pasay said one was granted.

Ms. DeVries said she felt this was a good faith effort. Normally she would have been concerned with parking, but she is flexible.

Chairman O'Brien said he was under the impression that the "stacked parking of 7" was there because of the floor space, not necessarily because of people working in the business. Mr. Boyd said that was correct.

Chairman O'Brien said he was willing to go along with this. He said he would like the recreation area to always stay. He would like this to go in the motion. He said he was also concerned about fire safety. Mr. McGuirk said that the PRC will take care of this. Chairman O'Brien said he would still like the motion to contain a fire safety inspection.

Moved by Mr. McGuirk, seconded by Ms. DeVries, to grant Petition 06-23 with the conditions that the recreational space of 5,000 feet remain as recreational space and that the Life Safety Code be part of the review of the Planning Board and potentially the PRC.

08-23...The continued petition of Wayne and Minabell Bowden, Trustee of the Wayne Bowden Rev. Trust for property located at 10 Ash Street. The applicants are seeking relief for 3 existing lots as follows:

Lot A – Seeking relief from Article IV Table II, Dimensional Requirements, Section 4.1 – Minimum Lot area required is 10,000 sq. feet; applicant proposal is 3449 sq. feet where 1601 sq. feet currently exists. Seeking relief from 4.1.1 – Minimum lot area per dwelling unit Minimum lot size required is 5000 sq. feet; proposed is 3,449 sq. feet where 1,601 exists. Seeking relief from 4.2 – Minimum Frontage. Minimum frontage required is 75 feet; proposed is 45 feet where 20 feet exists. Seeking relief from 4.3 – Minimum lot width. Minimum width required is 75 feet; proposed is 45 feet where 20 feet exists.

Lot B – Seeking relief from Article(s) I, Section 1.3 – a) Expansion of a non-conforming rear yard setback, b) Expansion of a non-conforming lot area and c) Expansion of a non-conforming lot area per dwelling. Rear setback required is 10 feet; proposed is 7.4 feet to 6.8 feet. Non-conforming lot area required is 10,000 Sq. feet; Proposed is reducing from 5,825 to 3,448. Non-conforming lot area per dwelling unit, required is 7,500 Sq. feet; proposed is 3,448 Sq. feet. In addition, Lot B is looking for relief from Article IV Table II, Dimensional Requirements, Section(s) 4.2 Minimum Frontage: Required is 75 feet,

proposed is 55 feet of frontage where 80 feet exists. 4.3 Minimum lot width: Required is 55 feet of lot width where 80 feet exists. Section 4.5.2 side yard: Required is 12 feet proposed is 10.9 feet.

Lot C – Seeking relief from Article IV Table II, Dimensional Requirements, Section(s) 4.1. Minimum lot area: Required is 10,000 sq. feet, proposed is to make a 3,470 sq. foot lot 2,941 sq. feet. 4.1.1 Minimum lot area per dwelling: Required is 5,000 sq. feet, proposed is to permit a 3,470 sq. foot lot where 2,941 sq. feet exists. 4.2 – Minimum frontage: Required is 75 feet, proposed is 60 feet of frontage where 60 feet exists today. 4.3 Minimum lot width: Required is 75 feet, proposed is 60 feet of lot width where 60 feet exists today. Section 4.5.2 – side yard: Required is 7 feet proposed is 6.3 feet where 0 feet exists. The property is located on Map 222, Lot 74, 74-1 & 58-1 in the RB Zone.

Attorney Justin Pasay and Henry Boyd came forward. Attorney Pasay said in April 2022 they tried to make the lot sizes more suitable. This Board said we should go to the Board of Selectmen which we did. They agreed to unmerge the lots. There are now three lots on this property. These lots are oddly configured. The benefit of this proposal is that the lots will become more conforming. Attorney Pasay said he did not know if relief was actually needed for 2 of the lots because only one will become less conforming.

Mr. Boyd said nothing can be done on one of the lots at present. With this proposal it becomes buildable and all lots become about the same size and be consistent with the neighborhood.

Questions from the Board

Chairman O'Brien said they were now part of the Aquifer District and therefore had to meet new sealed surface requirements. There is a new map showing the new Aquifer District. Mr. Boyd said they would have to go to the Planning Board to address this. They could also create a deck to reduce the pervious threshold.

Chairman O'Brien asked if asking for these variances is being done too early because of this new development. Attorney Pasay said he had not seen the map, but thinks it does apply in this case. Attorney Pasay said they would like to continue next month. Chairman O'Brien said when you add a new item for relief to the Agenda you must start over. It would be necessary to withdraw.

Moved by Ms. Duggan, seconded by Mr. McGuirk, to allow Petition 08-23 to be withdrawn without prejudice.

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

09-23...The petition of Richard and Diana Hamel for the property located at 48 Plymouth Street. The applicant is seeking relief from Article(s) 1.3 Expansion of Nonconforming Use, Article IV Table II, Dimensional Requirements, Section 4.5.2 side yard. Required is 10 feet, proposed is 5.6 feet. The property is located on Map 305, Lot 2 in the RA Zone.

Richard Hamel, Applicant, Henry Boyd and Bill Foster came forward. Mr. Boyd showed plans of existing and proposed. Mr. Hamel said the deck is old and needs to be replaced. There is now a swinging door and it is difficult to use. Mr. Hamel said he wants to put in a sliding door so the door won't open going out. Mr. Boyd said this is a very small expansion. Also the sealed surface does not change much. This will be easier to navigate and much safer.

Questions from the Board

Ms. Duggan asked if the Applicant would be keeping the cement pad. Mr. Foster said they would probably remove it because they are proposing to do a kitchen addition in 2024.

Ms. DeVries asked about sealed surface. Mr. Boyd said it would go from 48.3 to 51.5.

Comments from the Audience

Michael Sirmaian, 44 Plymouth Street, said he is the Applicant's neighbor. Mr. Sirmaian said he felt this was a very small change and is in favor of the project.

Back to the Board

Moved by Ms. Duggan, seconded by Mr. McGuirk, to grant Petition 09-23.

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.

10-23...The petition of Matthew Murtha and Dawn Marie May for the property located at 77 Brown Ave. The applicant is seeking relief from Article(s) 1.3 Expansion of Nonconforming Use, Article IV Table 2, Section(s) 4.5.1 Front Yard Setback. Required is 20 feet, proposed is 16.1 feet. 4.5.2 Side Yard Setback. Required is 7 feet, proposed is 6 feet. 4.5.3 Rear Yard Setback. Required is 10 feet, proposed is 1.1 feet. 4.9 Minimum Setback Separating a Dwelling from Wetland Conservation District. Petitioner will also require relief from Wetland Conservation District 2.3.4.3.a and 2.3.4.2. Restricted use within the Wetland Conservation District. Requirement is 50 feet, proposed is 1.1 feet. This is an existing new home that was built differently than proposed. The property is located on Map 287, Lot 3 in the RB Zone.

Matthew Murtha, Applicant, and Henry Boyd came forward. Mr. Boyd said the Applicant was here a few months ago. He proceeded to receive everything necessary in the way of permits, etc. The house was not built as it should have been. Mr. Boyd said they were asking for an Equitable Waiver because they believe that they have done nothing wrong.

Chairman O'Brien said perhaps this was not properly noticed. The Applicant asked for an Equitable Waiver but used variance criteria. Part C of the application is not there. Mr. Boyd then went through the four criteria for an Equitable Waiver.

Questions from the Board

Chairman O'Brien said the steps on the west side do not show on the plan. Mr. Boyd said he would correct this. Chairman O'Brien asked if they had been to the Conservation Commission. Mr. Boyd said they had plans to go to the Conservation Commission.

Ms. DeVries said she did not feel the criteria for an Equitable Waiver had been met. The contractor was acting on behalf of the owner. To qualify as an honest mistake it has to apply to both the owner and the agent.

Chairman O'Brien said the application does not make reference to an Equitable Waiver, just to the variance items. He suggested working off the variance side and reading the variance criteria. Mr. Boyd then did so and said he felt the five criteria had been met.

Chairman O'Brien said he would be willing to approve with the condition that the Applicant receives a positive recommendation from the Conservation Commission for the expanded deck, the height of the deck, the width of the deck and the depth of the deck.

Mr. McGirk and Ms. Duggan expressed agreement.

Moved by Ms. DeVries, seconded by Ms. Duggan, to grant Petition 10-23 with the condition that the Applicant receives a positive recommendation from the Conservation Commission for the expanded deck, the height of the deck, the width of the deck and the depth of the deck.

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

BUSINESS SESSION

Rules of Procedure

The Rules of Procedure were reviewed. Minor changes were suggested as amendments.

Moved by Ms. DeVries, seconded by Mr. McGuirk, to approve the Rules of Procedure as amended.

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

Alternate

Chairman O'Brien said Greg Grady's term as Alternate was ending and asked for the term to be extended.

Moved by Ms. Duggan, seconded by Ms. DeVries, to extend the term of Greg Grady as Alternate for a period of three years.

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

Approval of Minutes

Note: There was no motion or vote to approve the amended Minutes of February 16, 2023.

Adjournment

Moved by Ms. DeVries, seconded by Ms. Duggan to adjourn the meeting at 9:00 p.m.

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

Respectfully submitted,

Joan Rice
Secretary