

**HAMPTON ZONING BOARD OF ADJUSTMENT**  
**MINUTES – Draft**  
**May 27, 2020**  
**Teleconference Meeting**

**Members Present**

Bryan Provencal, Chairman  
Norma Collins  
Anne Bialobrzkeski  
Bill O'Brien,  
Tom McGuirk  
Greg Grady, Alternate

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

Mr. O'Brien 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.

**Election of Officers**

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to appoint Bryan Provencal as Chairman of the Zoning Board of Adjustment for the coming year.

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

**Moved** by Mr. Mc Guirk,, seconded by Chairman Provencal, to appoint Bill O'Brien as Vice Chairman of the Zoning Board of Adjustment for the coming year.

**Roll Call Vote:** 4 yes, 0 no, 1 abstention (O'Brien). Motion passed.

**Moved** by Mr. O'Brien,, seconded by Ms. Collins, to appoint Anne Bialobrzkeski as Clerk of the Zoning Board of Adjustment for the coming year.

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

Mr. O'Brien asked for adoption of the Rules of Procedure with minor changes.

**Moved** by Mr. O'Brien, seconded by Chairman Provencal, to adopt the Rules of Procedure as presented by Mr. O'Brien.

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

**PETITION SESSION**

Mr. O'Brien said Petition 12-20, 46 Ashworth Ave, Petition 19-20, 18 Perkins Ave., and Petition 22-20, 44 Reddington Landing have requested to be withdrawn and Petition 13-20, 467 Ocean Blvd. has asked to be moved to a later agenda.

**Moved** by Mr. O'Brien, seconded by Chairman Provencal, to allow Petitions 12-20, 19-20 and 22-20 to be withdrawn and Petition 13-20 to be moved forward on the Agenda following Petition 26-20.

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

**15-20...Appeal of the Planning Board approval** from January 15, 2020 from Round Eight Holdings LLC (Ralph & Maria Dumke), for property located at 737 & 739 Ocean Blvd., Map 223, Lot 70 (1 & 2) in the RA Zone.

Attorney Gregory Ramsey representing the petitioners and Attorney Chris Hawkins representing the Planning Board came forward.

Chairman Provencal asked if the petitioners wished to postpone. They did not.

**Moved** by Ms. Bialobrzkeski, seconded by Ms. Collins, to hear this appeal at this meeting.

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

Attorney Ramsey said the Planning Board's decision leaves a gaping hole in Hampton. Attorney Ramsey said they are asking the Zoning Board to overturn this approval. The ZBA has the authority to do this. The Planning Board did not have sufficient information to make this decision. The required dimensions were not given. 6.3.10 has no application currently to this property.

Attorney Hawkins said the Planning Board does not believe the Zoning Board has jurisdiction in this matter. The Planning Board recognized that it would be wrongful to force the property owners to be under the current ordinances.

Ms. Bialobrzkeski said she did not think it was up to the Zoning Board to do this. She said she did not feel this is a pre-existing non-conforming use. The Planning Board did not interpret the rule correctly. Also, there is not enough information on parking spaces. She said she was also concerned about having a heating unit next to a car.

Mr. O'Brien said a plot plan is supposed to go through to Superior Court, not through the Zoning Board.

Ms. Bialobrzkeski said she believed it was clear that Planning Board approvals are appealable only to the Superior Court. Chairman Provencal said the Zoning Board has done this in the past.

Chairman Provencal said petitioner should come to the Zoning Board for a variance on parking and then go to the Planning Board.

Mr. O'Brien said he would ask that a more detailed plan showing actual measurements for the parking be provided. Chairman Provencal, Ms. Collins and Mr. McGuirk all agreed.

*Comments from the Audience*

Kyle McManis, Kingston, spoke in favor of the overturn of the Planning Board's decision. He said everything has been complied with and the goal post keeps getting moved. He said he did not know where to go from here.

Ralph Dumke, Petitioner, said there are safety issues and the Town Planner ignored things.

*Back to the Board*

**Moved** by Mr. O'Brien, seconded by Mr. McGuirk to rule on this petition as follows:

1. The Zoning Board has no jurisdiction over appeals of Planning Board approval.
2. The Planning Board erred in accepting pre-existing non-conforming use and a variance will be needed for parking.
3. Legal parking spaces will be discussed under variance consideration.

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

**10-20...Special Exception**(continued from February 20, 2020 meeting) for property located at 5R Falcone Circle by Aquarian Water Company of New Hampshire. This property is located on Map 53, Lot 1 and in the Industrial Zone.

**Moved** by Chairman Provencal, seconded by Ms. Collins, to deny the Special Exception for property located at 5R Falcone Circle because a variance was not obtained.

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

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

**07-20...**The continued petition of 11R Johnson Avenue, LLC for property located at 11R Johnson Avenue seeking relief from Articles 1.3, 4.5.2, 4.5.3 to raise the existing structure to a height in which we can park cars underneath the house. The house will be within the same footprint and the house will remain as is, but be raised to an adequate height for parking underneath. This would assist in alleviating flooding concerns for the property owner and also create more parking. This property is located on Map 293, lot 47 and in the RB Zone.

Attorney James Scully said the petitioners have completed suggestions given by this Board. The house has been shifted. Attorney Scully went through the five criteria and said he felt they had been met.

Henry Boyd, Millennial Engineering, said there is also a new site plan per Mr. O'Brien's suggestion.

#### *Questions from the Board*

Mr. O'Brien said the parking is fine now. Ms. Collins said this is an improvement. Mr. Grady said they have done everything requested by the Board. Ms. Bialobrzkeski said it is an improvement over what is presently there.

#### *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 10-20 with the requirement that all other state and local requirements are met.

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.

**08-20...**The continued petition of 142 Ashworth Avenue, LLC for property located at 7 Johnson Avenue seeking relief from Article(s) 4.1, 4.1.1, 4.5.2, 4.5.3 to remove a foundation that currently exists on this site and replace it with piles. A new house will be constructed on these piles allowing for adequate legal parking underneath. In order to allow for parking and this structure the requested relief is necessary. This property is located on Map 293, Lot 47 and in the RB Zone.

Attorney James Scully discussed the petition and went over the five criteria. He said he believed the criteria had been met.

Henry Boyd said that at the last meeting it was suggested that the house should be moved to 4-1/2 foot setbacks. They believe this has been accomplished.

Mr. Boyd then went over the site plan.

Mr. O'Brien asked if this was single family. Attorney Scully said it was. Mr. O'Brien said a floor plan is needed and asked about the height of the building. Attorney Scully said it was 34 feet to the roof line. Mr. Boyd said maximum height is 36 feet.

Mr. O'Brien asked about the location of the four parking spaces. Attorney Scully said three will be underneath and another on the eastern side. Mr. O'Brien asked about firewalls. Attorney Scully said they would have firewalls if needed. Mr. O'Brien said he would like to make sure the easement is recorded. Attorney Scully said it is ready and prepared.

Ms. Collins asked if they could be asked to come back with a floor plan. Ms. Bialobrzewski asked if a variance is required for less than 7 feet between buildings. The Building Inspector said yes. Attorney Scully then said 4.5 Footnote 12 would be required. He then said he would like the Board to approve tonight's request and they would then come back for 4.5 Footnote 12 at which time they will bring floor plans.

#### *Comments from the Audience*

There were no comments from the Audience.

#### *Back to the Board*

Chairman Procencal asked that they come back and bring a complete package. Attorney Scully then said they would like to withdraw.

**Moved** by Mr. O'Brien, seconded by Chairman Provencal, to allow Petition 08-20 to be withdrawn without prejudice

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

**14-20...**The petition of Lee & Terry Perrin for property located at 40 Mooring Drive seeking relief from Article(s) 4.3 and Article IV as to 4.5.2, 4.5.2, 4.5.3 to raise the existing structure in order to construct a 2-car garage under. Remove 1<sup>st</sup> floor front deck and construct a 2<sup>nd</sup> floor front balcony and construct an enclosed set of stairs to the side porch. All within the footprint and remove 750 sq. ft. of paved driveway and replace with loam and seed. This property is located on Map 290, Lot 89 and in the RB Zone.

Mr. O'Brien said there is an error in the notification. This has not been notified properly.

**Moved** by Chairman Provencal, seconded by Mr. O'Brien, to have Petition 14-20 renoticed properly.

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

**16-20...**The petition of Mari Fontaine (Tight Knot Design Build) for property located at 9 Cora Avenue seeking relief from Article(s) 4.5.2 to build a new 115 sq. ft. second story deck. Variance is for the landing on the side yard and the stairs on the side yard that will only exceed the setback by 2 feet. This property is located on Map 280, Lot 35 and in the RCS Zone.

Mari Fontaine, Petitioner, came forward. Ms. Fontaine went through the five criteria and said she felt they had been met.

*Questions from the Board*

Ms. Bialobrzkeski asked the petitioner if she was aware she would need a new wetlands permit. Ms. Fontaine said she was. Ms. Bialobrzkeski said she did not feel there was enough information because the Board does not know where the setbacks are.

*Comments from the Audience*

Gary Colburn, abutter, spoke against this petition.

*Back to the Board*

Ms. Bialobrzkeski said she did not think it was doing a service to give people a variance and then have them come back because it didn't work. There is not enough information.

Mr. O'Brien said he would want to know that this will go to Conservation re the buffer.

**Moved** by Chairman Provencal, seconded by Mr. Obrien, to grant Petition 16-20 on the condition this will go to Conservation to make sure boundaries are checked to be outside the 50 foot buffer.

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

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

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

**BUSINESS SESSION**

**Motion for Rehearing – Aquarian Water Tower**

Chairman Provencal said he did not see any new information that was not discussed during the last meeting. Mr. O'Brien, Ms. Collins, and Mr. McGuirk agreed.

**Moved** by Chairman Provencal, seconded by Mr. McGuirk, to deny the Motion for Rehearing – Aquarian Water Tower.

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

**Adjournment**

**Moved** by Mr. McGuirk, seconded by Ms. Collins, to adjourn the meeting at 9:38 p.m.

Respectfully submitted,

Joan Rice  
Secretary