

**HAMPTON ZONING BOARD OF ADJUSTMENT  
MINUTES  
June 15, 2023**

**Members Present**

Bill O'Brien, Chairman  
Nichole Duggan  
Erica De Vries  
Tom McGuirk  
Ken Sheffert

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**

**17-23..** The petition for relief of Patricia Donald McGowan for the property located at 24 North Shore Road. The applicant is petitioning for a Special Exception from Zoning Ordinance Article 21, Section 21.2, Location. Applicant is seeking relief from the Zoning Board of Adjustment to allow Short Term Rentals at the aforementioned property address. The property is located on Map 131, Lot 8 in the RA Zone.

Patricia McGowan, Applicant, and Attorney Justin Pasay came forward. Chairman O'Brien said this petition was discussed at the last meeting and there was public comment at that time. Therefore it is not necessary to go back to the beginning.

Attorney Pasay said based on the Supreme Court decision there is a question whether relief is required at all. Ms. De Vries said she felt there were still some questions to be answered. She asked if Ms. McGowan if she possesses records of all rentals. Ms. McGowan said she did. Attorney Pasay said they need to determine if it is a legally non-conforming use. Ms. De Vries asked Ms. McGowan where she stays when she has renters. Ms. McGowan replied that she stays in a loft above the garage. This loft has a bathroom, but no kitchen.

Chairman O'Brien asked if there were house rules. Ms. McGowan said there were and explained what they were and said if the rules were not followed, the renters would be asked to leave.

Attorney Pasay said the neighbor complaints occurred during the time Ms. McGowan was in New York performing nursing duties during Covid. She has since been on site.

Ms. De Vries said she believed there are still questions for which legal counsel is needed. This Board cannot make a decision at this meeting.

Attorney Pasay said there is a question as to whether short term rentals were permitted before the March 23 Town Meeting. If so, was it valid. Attorney Pasay said he felt this was a similar case to Conway. The use was validly established. The Applicant did everything asked until March 2023. Chairman O'Brien said this should be continued until next month so that legal opinion can be received. He did agree to hearing from the Audience.

#### Comments from the Audience

Al Indelicato, 118 Woodland Road, spoke against the petition. He said they live in a residential neighborhood. This is a business and will lower property values. Mr. McGuirk said that ordinances are done by the Planning Board not the Zoning Board. This is a legal question.

Ms. De Vries said she believed the Conway case is very much on point.

John McEachern, 20 North Shore Road, said his property abutts the property in question. He said Ms. McGowan received letters telling her to cease and desist on August 5, 2020 and June 21, 2021. This has been going on for years. Ms. De Vries said there were numerous letters saying to stop. Twenty-one months occurred between the two letters. Attorney Pasay said the last letter said Ms. McGowan never responded. This is not true. Mr. McGuirk said legal advice should have been asked for earlier.

Geoffrey Shreck, 28 North Shore Road, said he is also a direct abutter. He said 15 of his neighbors signed a petition against this use. There has been noise, drug use and fireworks.

Mr. McGuirk said this Board is not legal counsel for the Town. The question is whether or not this was a pre-existing non-conforming use. Mr. McGuirk said legal counsel is needed to answer all of the questions.

Carolyn Shreck asked if renting is allowed for the next month. Chairman O'Brien said this Board cannot answer that.

Chairman O'Brien said he would like to continue until next month. The Applicant agreed to this.

**Moved** by Ms. De Vries, seconded by Mr. Sheffert, to continue Petition 17-23 until the next meeting.

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

**18-23...**The petition for relief of Dubois Family Rev. Trust for the property located at 176 King's Highway. The applicant is petitioning for a Variance from the Zoning Ordinance Article I, Section 1.3 Expansion of a non-conforming structure and Article IV, Section 4.5.1

Front Setback. Applicant is seeking relief to construct a new deck in front of existing dwelling, decks to be 15' where 20' is required. Asphalt driveway to be replaced with pervious pavers. The property is located on Map 168, Lot 35 in the RB Zone.

Attorney Sharon Somers and Henry Boyd, Millennial Engineering, came forward. Attorney Somers said the applicants were out of town and she has presented a letter of authorization. Attorney Somers said the applicants were before the Board in January and their petition was granted at that time. Approval was granted on the northerly side of the property. Construction has begun on the southerly side of the property since that time. The applicants did not believe they needed further relief at that time. Incorrect plans were erroneously submitted. They were advised there was a problem and construction ceased. Now approval is requested for the southerly side.

Chairman O'Brien said the Board did not approve the northerly side coming out to the same degree as it is asked for on the southerly side. Attorney Somers said it was her understanding that the applicants did not understand this. Ms. De Vries said she did not think there was confusion in this case. She said she thought they changed their minds. What they have submitted now is for more than what was originally approved. At this time Attorney Somers went through the five criteria and said she felt they had been met.

#### Questions from the Board

Ms. De Vries said she believed this was just a style choice and not a hardship inherent to the land. Mr. McGuirk said this proposal does look a lot better than the previous one. Chairman O'Brien said if one is on the northerly side the view is almost the same. Mr. McGuirk said it is unfortunate they did not bring this to the Board originally. It is upsetting when the Board approves a project and it is not built as approved.

Mr. Boyd said they are not getting closer to the setback now than they were before. Ms. De Vries said she did not believe there was confusion and feelings do not affect criteria. Mr. Boyd said he wanted to make it clear that the applicants believed they were okay because of earlier relief. Mr. Boyd said he felt if these plans were submitted in the first place they would have been approved. Chairman O'Brien said it looks like there is a solid railing in the setback and he does not like that.

#### Back to the Board

**Moved** by Mr. McGuirk, seconded by Mr. Sheffert, to grant Petition 18-23 with the condition that the privacy fence be converted to either balusters or glass within the setback and before anything is done on the second floor.

Chairman O'Brien asked the Board if the five criteria had been met. All members said that they had with the exception of Chairman O'Brien who said he would abstain because he informed the Building Inspector that the decks being built are not the same as plans approved by the ZBA. Chairman O'Brien said he met with the contractor to discuss the problem.

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

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## **BUSINESS SESSION**

### **Approval of Minutes**

**Moved** by Ms. Duggan, seconded by Mr. McGuirk, to approve the Minutes of May 18, 2023 as amended.

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

### **Rules of Procedure**

Chairman O'Brien said he had made some minor changes in the Rules of Procedure.

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

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

### **Adjournment**

There being no further business, the meeting was adjourned at 9:11 p.m.

Respectfully submitted,

Joan Rice  
Secretary