

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES - *Draft*
August 17, 2023

Members Present

Bill O'Brien, Chairman
Erica De Vries
Greg Grady, Alternate
Bryan Provencal, Alternate
Norma Collins, Alternate

Also Present

Greg Arvanitis, Building Inspector

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

Chairman O'Brien said the applicants for Petition 23-23, 65 Tide Mill Road, would like to request a continuance.

Moved by Mr. Provencal, seconded by Ms. De Vries, to continue Petition 23-23, 65 Tide Mill Road, until the next meeting at which time it will be second on the Agenda.

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

17-23..The continued 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. 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. Attorney Pasay said at the July meeting Ms. De Vries said in her view because the ADU was established by his client, the short term rental use was not validly established and therefore the property has to come into compliance. Attorney Pasay said they do not agree with this and the argument is set forth in a letter sent to the Board last week. Chairman O'Brien then asked each Board member if they had reviewed the package and letter. All said that they had.

Moved by Ms. De Vries, seconded by Mr. Grady, that the Board should find that the application for 24 North Shore Road does not meet the burden of proof that a pre-existing non-conforming use to the property existed.

Ms. De Vries then stated the following regarding Prior Use:Not Legally Conforming:

“After reviewing the submissions from the applicant, both in writing and at our hearings, I move that the Board find that the applicant has not met the burden to prove that the applicant has a pre-existing, non-conforming use to use the property as a Short-Term Rental. This is based on the following facts:

The applicant bought the house in 2018 and began renting the house in 2019. These rentals took place without a Certificate of Rental Occupancy from the Town.

The applicant secured a Certificate of Rental Occupancy from the Town on Jan. 6, 2021, and the applicant began listing the property as a short-term rental again.

At least by April of 2021, the applicant began residing in a loft space over her 24 North Shore Road garage when guests were renting the primary home on the property.

The applicant described the loft as “a finished space.” It has a ¾ bathroom, a sleeping area, a refrigerator, a microwave, and a heating fireplace. The space also has finished flooring and walls.

The applicant sleeps and lives in this space above the garage.

This loft space above the garage has been in existence since before the applicant purchased the property in 2018.

Hampton’s Zoning Ordinance defines an Accessory Dwelling Unit in Section 1.6 (page 3) as:

“A residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one to four persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. A residential living unit located within a detached structure that predates the enactment of Article III-A, and that is already detached from the principal dwelling unit shall also be considered an Accessory Dwelling Unit.”

Based on this definition and the above facts, the ZBA finds that the loft space above the garage is an ADU and is being used by the applicant as an ADU.

Under Article III-A.4(c) Occupancy Requirements, the Town’s zoning ordinance that “an accessory dwelling unit or principal dwelling unit having an accessory dwelling unit shall not be rented out for less than six (6) months at a time.”

The Board therefore finds that this property was not in compliance with the zoning ordinances prior to the March 2022 amendment regarding Short-Term Rentals and must therefore find no prior right to a pre-existing, non-conforming use upon which the applicant’s continued short-term rentals would be allowable.

Thus the applicant requires a Special Exception in order to have Short-Term Rental on this property in accordance with the Town’s Zoning Ordinances section 21.2.”

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

Ms. De Vries said she would like to address the Special Exception. Attorney Pasay said they had not briefed the Special Exception request. Chairman O’Brien said he would give Attorney Pasay five minutes to address this. Attorney Pasay went through the seven criteria and said he felt they had been met.

Moved by Ms. De Vries, seconded by Chairman O’Brien, to deny the request for Special Exception for Petition 17-23, 24 North Shore Road.

Ms. De Vries then addressed the Special Exception:

“The applicant then asks for a special exception. Seven (7) conditions must be met. The applicant offers 3 conditions for the Board’s consideration.

This Board finds that the 7 conditions, all of which must be met, have not been totally met by the applicant.

The Board finds relative to each of the 7 conditions:

1. That the use is so designed, located, and proposed to be operated that the public health, safety, welfare, and convenience will be protected.
Hampton Zoning Board of Adjustment

- a. Abutters in prior hearings reported activities that disturbed their peaceful enjoyment of their properties. These included excessive drinking that resulted in profanity directed at the permanent residents, and fireworks.
 - b. The Board finds that the applicant's offer to limit stays to guests staying at least 5 nights *does not* adequately address the legitimate health, safety, and welfare concerns of abutters.
 - c. The applicant does not meet this condition.
2. That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.
 - a. We agree that the use applicant proposes is residential in nature.
 - b. The applicant meets this condition.
3. That adequate landscaping and screening is provided as required herein.
 - a. We agree that there are wooded sections between the property and abutters.
 - b. The applicant meets this condition.
4. That adequate off-street parking and loading is provided, and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.
 - a. We agree that the parking requirements of the Zoning Ordinance appear to be met through the 5 parking spots.
 - b. The applicant meets this condition.
5. That the use conforms with all applicable regulations governing the district where located.
 - a. The use *would not* conform with all applicable regulations governing the district where located because the applicant still has an Accessory Dwelling Unit. Accessory Dwelling Units cannot have short-term rentals.
 - b. The applicant does not meet this condition.
6. That if the application is for a use in the Industrial District such exception will not affect the quality of water supplies; constitute a health hazard to the community; or permit temporary structures.
 - a. This section is not applicable.
7. The applicant shall demonstrate that handling, storage, and containment of any chemical substances defined as "hazardous" will be handled in strict accordance with the regulations and recommendations of the EPA and/or any governmental body charged with enforcing compliance with any laws or statues regarding hazardous substances.
 - a. This section is not applicable.

The applicant has failed on 2 of the criteria for a Special Exception. Therefore, the ZBA declines to grant a special exception for short-term rental housing at this property."

Vote: 4 yes, 0 no, 1 abstention (Provencal). Motion passed. Mr. Provencal stated he was abstaining because although he was familiar with all the paperwork, he was abstaining because he had not watched the tapes of former meetings.

24-23...The petition for relief of Abigail Galvin for the property located at 23 Thomsen Rd. Applicant is petitioning for Variance from Article III, Section 3.12.1 and 3.41 for an in-home preschool. The property is located on Map 163, Lot 13 in the RA Zone.

Abigail Galvin, Applicant, said being aware of the lack of early childcare education in Hampton she wishes to have a small preschool in her home. She described the location and said the hours would be 8:00 a.m. – 3:00 p.m. Monday through Friday. There would be 6 to 12 children and an assistant teacher. Ms. Galvin went through the five criteria and said she felt they had been met.

Questions from the Board

Ms. De Vries asked if this should be a Special Exception as opposed to a request for a variance. Chairman O'Brien said no. Ms. De Vries then asked how much traffic would increase. Ms. Galvin said there would be little to no increase. Ms. De Vries asked if noise would be an issue. Ms. Galvin said it would not because of the placement of her house and buffering vegetation. Ms. De Vries acknowledged the need for child care, but asked if the hardship criteria had been met.

Mr. Provencal said this is not the right area to do this. Property values will go down. This is not allowed in the RA Zone. Ms. Galvin said she was unable to find any other place to do this.

Chairman O'Brien asked Ms. Galvin if this was her permanent residence. She said it was. Chairman O'Brien said he agreed with Mr. Provencal because once you start opening up in the RA Zone there will be problems in the neighborhood. There are other places in town to do this.

Mr. Arvanitis said when a complaint came in Ms. Galvin was very responsive. She did not realize she would need a variance.

Comments from the Audience

Erica Tarnowski, 16 Barbour Road, said she realizes there is a problem with child care in Hampton. This could be a welcome addition.

Lee Clifford, 20 Thomsen Road, said she was an abutter. She said she wanted to know if Ms. Galvin had a license. Ms. Galvin said you can't get a license until you have zoning approval, building and health inspections. Ms. Clifford said the corner of Mace and Thomsen is an accident waiting to happen. It will be a disaster with a preschool there. There is concern that home values will be impacted. It is an RA Zone. It is prohibited. Ms. Clifford said she also had a concern that this will set a precedent. There is clearly a need, but there are other locations in town.

Leslie Hartley, 2 Lindor Lane, said she has known Ms. Galvin for a number of years. She said she does know Ms. Galvin looked everywhere for a place for her preschool. She could not find one. There is a huge need for a preschool.

Hampton Zoning Board of Adjustment

August 17, 2023

Page 6

Chairman O'Brien said letters were received. Several said there would be a problem because this was in the RA Zone.

Back to the Board

Mr. Provencal said this is not the right place for this. This is an RA Zone.

Ms. Collins said she appreciated what Ms. Galvin wants to do. There is a need. However, she said she lives in an RA Zone and could not accept this.

Mr. Grady said he agreed with Mr. Provencal and Ms. Collins.

Ms. De Vries said she hears the concerns and does not disagree with them. Ms. De Vries discussed the hardship criteria in this case. Ms. De Vries suggested offering the Applicant the opportunity to continue and come back with a stronger argument regarding hardship.

Chairman O'Brien said another option would be to go before the voters next March.

Moved by Ms. De Vries to allow the applicant to come back with a stronger argument regarding hardship.

There was no second. Motion failed.

Ms. Galvin then said she would like to withdraw without prejudice.

Moved by Mr. Provencal, seconded by Mr. Grady, to allow Petition 24-23 to be withdrawn without prejudice.

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

25-23...The petition for relief of Eileen Goodwin for the property located at 17 R Barbour Rd. Applicant is petitioning for a variance from Article XVI, Section 16.1 and 16.2 for cell tower installation. The property is located on Map 111, Lot 1 in the RA Zone.

Francis Periso, representing the Applicant came forward.

Chairman O'Brien said the abutters list on this application was incomplete. Aquarian Waters was not on the list. The Applicant withdrew that. Also the Town was supposed to notify surrounding towns by registered mail. This was also not done.

Mr. Periso said he filed a complete application which included Aquarian and notification to surrounding towns. He said he provided labels and wrote a check for \$600.

Chairman O'Brien said Aquarian was not notified according to procedure. Mr. Periso said they would have to go to the Planning Board. Chairman O'Brien said the Planning Board can approve tentatively without the Zoning Board.

Mr. Periso said he would like to do a power point presentation tonight. He said he believed this petition should go forward. Ms. De Vries said she was not in favor of that. Mr. Provencal said he agreed because it causes an interruption. The other Board members agreed.

Hampton Zoning Board of Adjustment

August 17, 2023

Page 7

Chairman O'Brien said the Board would need to hire experts and it would be at the expense of the Applicant. Chairman O'Brien said he would recommend continuing until next month when the towns and Aquarian have been notified correctly. This would be first on the Agenda. It was noted that Petition 23-23 was first on the Agenda. Mr. Provencal said he would amend it so that Petition 23-23 would be second on the Agenda.

Moved by Ms. De Vries, seconded by Mr. Provencal, to continue Petition 25-23 until next month at which time it will be first on the Agenda.

Vote: 5 yes 0 no. Motion passed unanimously.

Chairman O'Brien allowed two people to speak.

Vincent Penzo, 340 Lafayette Road, said that when the Board is looking for an expert that person should also have some experience with health issues.

Phil Bean, 143 Winnacunnet Road, said there is no public access to these documents online. Transparency is needed. Chairman O'Brien noted that anyone can gain access to these documents by asking for them at the Town Office. There will be a fee.

There was then a five minute recess.

The meeting resumed.

26-23...The petition for relief of JY Realty Holdings for the property located at 15-17 Manchester St. Applicant is petitioning for Variance from Article I, Section 1.3; Article IV, Sections 4.5.1, 4.5.2 and 4.8, and Article VI, Sections 6.3.1 and 6.3.11 for dimensional requirements and parking. The property is located on Map 290, Lot 60 in the RB Zone.

Henry Boyd, Millennial Engineering, said he was representing the client . He said normally surveys are done before doing anything and this is a good thing. Mr. Boyd said they got called to do an elevation post construction certificate which is a FEMA document that the Building Inspector will require to make sure there is compliance. Mr. Boyd then said his people said there were no stairs. They were then called and told they would need a variance.

Mr. Boyd then discussed the parking situation. There are five units in these two buildings. This would require 10 parking spaces. Mr. Boyd said he could only design two that would be compliant. Chairman O'Brien suggested raising the buildings to accommodate parking underneath. Mr. Boyd noted that the owner is an absentee.

Mr. Provencal said this is the kind of stacked parking that has never been allowed in this Zone. He suggested making it two units and then there would be plenty of parking. Chairman O'Brien agreed with this. Mr. Provencal said he could go along with the stairs because they are needed to gain access to the building. Mr. Boyd said he would have to go back to the Applicant with these suggestions and would now ask for a continuance.

Moved by Ms. De Vries, seconded by Mr. Provencal, to continue Petition 26-23.

Comments from the Audience

Edie Ivos, 13 Manchester Street, said she was neutral on this project. Her concern is that sand has washed over her property. Chairman O'Brien said she should go to the Building Inspector. Mr. Boyd said he would also inform his client.

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

27-23...The petition for relief of MacArther Family Irrevocable Trust for the property located at 2 Homestead Circle. Applicant is petitioning for Variance from Article IV, Sections 4.5.1, 4.5.2 and 4.8 for dimensional requirements. The property is located on Map 127, Lot 79 in the RA Zone.

Mr. & Mrs. MacArthur, Applicants, and Henry Boyd, Millennial Engineering, came forward. Mr. Boyd showed present and proposed plans. The Applicants wish to update the structure and make a garage addition. They want to redo the patio which will be done with pervious pavers. The driveway will also be redone with pervious pavers. There will be new landscaping and more parking. Mr. Boyd went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. De Vries said she thinks this is a good project and she is happy with it.

Ms. De Vries asked if site lines will be impacted. Mr. Boyd said they will not and there will be no traffic problem.

Moved by Mr. Provencal, seconded by Ms. Collins, to grant Petition 27-23 with the condition that within 14 days the Applicants will consult with the Town Planner and the Conservation Coordinator to insure the plans meet the conditions of 2.5.5.b.

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

28-23...The petition for relief of Wayne and Minibell Bowden, Trustees, Wayne Bowden Rev. Trust for the property located at 10 Ash St. Applicant is petitioning for Variance from Article I, Section 1.3 and Article IV, Sections 4.2 and 4.3 for non-conforming lot and dimensional requirements. The property is located on Map 222, Lots 74 & 58-1 in the RB Zone.

Attorney Justin Pasay and Henry Boyd came forward. Attorney Pasay said he had just noticed that since March this property is within the Ground Water Protection District. Therefore, they were required to notify Aquarian and they did not do this. He said the only relief they are asking for is a minor lot line adjustment. Attorney Pasay said he would hope for confirmation as to whether they should be asking for relief for 58-1. There are no building plans for Lot 58-1. Mr. Boyd said there will still be two lots. They are not creating a lot.

Hampton Zoning Board of Adjustment

August 17, 2023

Page 9

Questions from the Board

Mr. Provencal said he thought they were doing it correctly. Ms. De Vries said she did not believe relief was needed on 58-1. Mr. Provencal agreed.

Comments from the Audience

Maria Avciello said she was concerned about the parking situation. Mr. Boyd said it will be better than it is now. They will have two adequate parking spaces.

Ms. De Vries said concerns about parking are legitimate, but there are limitations on what this Board can do.

Back to the Board

Chairman O'Brien said he would propose moving P-2 inward to the east. Mr. Boyd said they could do that. Chairman O'Brien said the Applicants would have to meet with the Town Planner and the Conservation Coordinator to insure the plans meet the conditions of 2.5.5.b.

Moved by Mr. Provencal, seconded by Ms. De Vries, to continue Petition 28-23 next month.

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

BUSINESS SESSION

Approval of Minutes

The Minutes of July 20, 2023 will be addressed at the next meeting.

Adjournment

Moved by Mr. Grady, seconded by Ms. De Vries, to adjourn the meeting at 9:50 p.m.

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

Respectfully submitted,

Joan Rice
Secretary