

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES – Draft
October 20, 2022

Members Present

William O'Brien
Anne Bialobrzeski
Erica De Vries
Nichole Duggan
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

Chairman O'Brien said the Applicants for Petition 40-22, 42 Exeter Road, have asked to withdraw.

Moved by Ms. De Vries, seconded by Ms. Duggan, to allow Petition 40-22. 42 Exeter Road, to be withdrawn.

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

PETITION SESSION

36-22...The continued petition of Four Fields LLC for property located at 37 Anns Lane. The applicant is proposing to subdivide the property into two (2) separate lots which require certain variance relief to frontage and lot width and shape. The applicant is seeking relief from Article IV Table 2, Sections 4.2 for a proposed 28 feet of frontage where 125 feet is required; 4.2 (footnote 22) to allow a lot that is not square and does not have sides that are equal in length to 75% of the 125' minimum required and touching the front lot line. The property is located on Map 127, Lot 20 in the RA Zone.

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

Attorney Derek Durbin, Robert Jones, Builder, and Mike Seibert, Engineer came forward. Attorney Durbin said this application has been before the Board before. Changes have been made since the last time. There was concern that there was a second dwelling unit on the property and there was a debate whether that was an accessory dwelling unit that was grandfathered or a two-family property. A two-family dwelling unit would require a different type of relief. Attorney Durbin said they have agreed to eliminate that second dwelling unit. Another concern was drainage. A drainage study was done. It demonstrated no negative impact. A concern was expressed by the neighbor to the left about the loss of vegetation. A privacy fence has been proposed. Density will be controlled. There will be adequate access. This has been reviewed by the Fire Department. Each proposed lot will be double what is required. Attorney Durbin then went through the five criteria and said he felt they had been met.

Mr. Seibert went over the subdivision plan and the proposed plan. He said they plan to remove the pool house and dwelling unit and the shed. This will reduce impervious surface. Mr. Seibert showed the stormwater system.

Questions from the Board.

Mr. Grady asked if the drain would go into the street. Mr. Seibert said it would go into the ground.

Ms. Bialobrzkeski said the drain along the driveway seems to involve both lots. Mr. Seibert said it would take water from the driveway. Ms. Bialobrzkeski said she thought there would have to be some sort of easement. Attorney Durbin said the intent is to do an easement.

Attorney Durbin said the relief they are asking for does not apply to setbacks or height. What is built there will have to go through subdivision review.

Ms. Bialobrzkeski said she believed they were getting conflicting information. The plan shows a proposed location for an ADU. Mr. Seibert said there will be no ADU.

Ms. Bialobrzkeski said the lot size has been represented as 4 times the required lot size. The required lot size is 20,000 sq. ft. and this property does not have 3 times the required lot size. There are things represented here that are not correct. Attorney Durbin said it does not matter because they are looking at lots across the street that are like this. Ms. Bialobrzkeski said it mattered to her because the Board is looking at the spirit of the ordinance. Ms. Bialobrzkeski said she was pretty sure that Lots 4 and 5 got variances because there were existing structures at the time. Attorney Durbin said the statements being made were prejudicial. What they have is consistent with the spirit of the ordinance. Ms. Bialobrzkeski asked if they feel the three lots across the street support their application.

Attorney Durbin said yes. The lots across the street are consistent in terms of size. There are porkchop lots there.

Ms. De Vries said Attorney Durbin made the argument that the abutting properties are enhanced because of new building. She asked if they acknowledged that a new 2-story house could have a negative impact based upon where you are proposing to put it. As far as property values being enhanced that is hard to swallow. Some new construction does not add value. Attorney Durbin said prevailing trends do not show a reduction in property values with new construction. Ms. De Vries said she wanted to be clear that she does not believe new construction enhances property values of the abutting properties. Ms. De Vries said she was having a hard time seeing the hardship here. She said she did not see having a larger lot in a particular neighborhood constitutes a hardship.

Attorney Durbin said the frontage requirements are to control density consistent with surrounding properties. There are special conditions. There are two curb cuts. The two lots across the street are consistent.

Ms. De Vries said reasonableness is subjective. When others bought in this neighborhood they would have a reasonable idea that your lot would not be subdivided because of the ordinance. The question is is it reasonable not just for you but for the impact on the other lots. Ms. De Vries said she did not see the unique hardship associated with this lot. She said she did see a reduced value because she does not believe new construction is going to increase the value of the other properties.

Attorney Durbin said he did not believe they were conflicting with the spirit of the ordinance. They are still above the threshold of density.

Ms. Bialobrzkeski said there is conflicting information on this application. The Applicant says there is no ADU, but it shows on the plan.

Comments from the Audience

Terry Warren, 9 Anns Terrace, said the neighbors are concerned about their homes. When they were built there were different rules. There are concerns about limiting amount of development in the Aqafer Protection Zone, drainage and density. She asked the Board not to grant this Petition.

Peter Appianni, 11 ½ Homestead Circle, said this will not conform with the other lots.

Craig Wlodyka, 7 Anns Terrace, said he did not see a hardship. This will change the character of the neighborhood. He said he was also concerned with the removal of trees. Mr. Siebert said most of the trees will stay.

Back to the Board

Mr. Grady said he did not feel this will devalue surrounding properties. They have the property to put in a well needed home. Mr. Grady said he was on the fence as to approving this petition. Ms. Duggan said she was also on the fence.

Ms. De Vries went through the five criteria:

#1: Contrary to the Public Interest – Observed

#2: Spirit of the Ordinance – Not observed.

#3 Substantial Justice – Observed. There is not a loss to the owner.

#4 Values will not be diminished – Not Observed. The burden is on the Applicant to prove this will not happen. It is up to the Applicant to convince the ZBA.

#5: Not observed. Ms. De Vries said she believed this would affect the character of the neighborhood.

Ms. Bialobrzewski said she did not believe Criteria #1 was met.

Chairman O'Brien then asked for a motion.

Moved by Ms. De Vries, seconded by Ms. Duggan, to deny Petition 36-22.

Ms. De Vries then gave an explanation of her motion. She said it was her belief that the Spirit of the Ordinance has not been observed because the requirement of 4.2 Footnote 22 is not only about density. It is about the shapes of lots and some element of predictability of those shapes. The other reason is that I do not believe the requirement that neighborhood property values will not be diminished has been met. I do not believe the Applicant met that burden by simply stating that in other areas, including Hampton, that new construction generally raises property values. We did hear some testimony from abutters who said their property values will be diminished. We are allowed to take that into consideration. No expert advice was provided by the Applicant and abutters took issue with that. And I believe as a matter of common sense that the abutters' property values will not be enhanced by subdividing this lot and creating a porkchop lot that touches on 7, 8, 9 lots.

Chairman O'Brien asked Ms. Duggan if she agreed with this as she was the second to the motion. She said she would like to add hardship. Ms. De Vries said she would not vote on hardship.

Chairman O'Brien called for a vote.

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

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

37-22...The continued petition of Alex Ross for the property located at 3 Noel Street seeking relief from Article IV Table 2 Section(s) 4.5.1 for a proposed 13.9 foot front setback where 20 feet is required; 4.8A, where 30.5% of impervious coverage is proposed and a maximum of 25% is required. The property is located on Map 272, Lot 41 in the RA Zone.

Alex Ross and James Rowe came forward. Mr. Ross said this is a very simple application. The variance request is for very minor improvements to a residential property. It's for a garage with driveways and a house with a front porch and rear deck. The applicant would like to square off or continue his front porch. He said they feel this meets all the criteria and by removing a portion of impervious asphalt will have a decrease in impervious surface. An infiltration trench will be put in. The Applicant reached out to four direct abutters and they are all in favor of the project. Contractors were contacted for using pavers in the driveways and the costs received were \$58,000 and \$44,000. This is definitely not in the budget for this project.

Questions from the Board

Chairman O'Brien asked when the house was purchased. Mr. Ross said 9 years ago. Chairman O'Brien asked if they had added anything. Mr. Ross said no. Chairman O'Brien asked if there was any reason they can't take away the second driveway. Mr. Ross said it would cause an access problem.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Ms. De Vries said she believes this is an improvement over the original plan. There is a reduction in impervious. The infiltration trench is being added. Ms. De Vries said she was in favor of this petition.

Moved by Ms. De Vries, seconded by Mr. McGuirk, to grant Petition 37-22.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members said they did with the exception of Ms. Bialobrzkeski.

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

41-22...The petition of Kim & Laura Peschier for property located at 12 JoAnne Lane seeking relief from Article(s) 1.3 Expansion of non-conforming use and 4.5.3 rear setback to add 2nd story addition to existing footprint 24. 5' x 38' of a 3-bedroom, 1 bath single

family dwelling. Proposing to add a 24.5' x 19.2' 2nd story addition to add an additional bedroom and bath. This property is located on Map 282, Lot 196 and in the RB Zone.

Kim and Laura Peschier, Applicants, and Richard Grimes, General Contractor, came forward. Mr. Grimes said the Board now has a certified plot plan as requested. They are using only 48% of the footprint.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Ms. De Vries, seconded by Ms. Bialobrzkeski, to grant Petition 41-22.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had,

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

42-22...The petition of Denis O'Neil #9 and Angelina Marquis/Diane Gorman #7 for property located at 7 and 9 Gill Street seeking relief from ordinance Article 2.3.4B 2 to correct the flooding/ponding/icing and erosion in rear of property. This property is located on Map 223, Lot 32 and in the RCS Zone.

Mr. O'Neil said they are requesting a variance upon recommendation after meeting with the Conservation Commission, DES and Mission Wetlands. Mr. O'Neil showed pictures of his yard with the flooding. He said this is a safety issue. Mr. O'Neil went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. De Vries asked why this was a safety issue. Mr. O'Neil said in case of fire the standing water, icing, etc. would constitute a safety issue.

Ms. Bialobrzkeski asked if the grade in the crawl space at existing grade. Mr. O'Neil said yes. Brianna O'Brien, Conservation Commission, said in 2005 the flood elevation was 9.

Ms. De Vries asked Ms. O'Brien if she had a recommendation on this. She said this has not yet been before the Conservation Commission. She said in her review she does have questions on the reliability of this. She said she did not know if this would work.

Ms. Bialobrzkeski said there seems to be confusion about what this is because you are applying to the Wetlands Bureau to enhance the wetlands. There is a possibility that what you would be doing would be adverse to those around you. Ms. Bialobrzkeski said she thought the Applicant might continue this while some of these things are cleared up.

Moved by Ms. De Vries, seconded by Mr. McGuirk, to grant Petition 42-22 based upon a positive recommendation from the Conservation Commission.

Chairman O'Brien asked the Board if they felt the five criteria were met. All members agreed that they had with the exception of Ms. Bialobrzkeski.

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

BUSINESS SESSION

Approval of Minutes

Moved by Ms. Bialobrzkeski, seconded by Ms. De Vries, to approve the Minutes of July 21, 2022 as amended.

Vote: 3 yes, 0 no, 2 abstentions (Duggan, McGuirk). Motion passed.

Moved by Ms. Bialobrzkeski, seconded by Ms. De Vries, to approve the Minutes of August 18, 2022 as amended.

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

Moved by Ms. Bialobrzkeski, seconded by Ms. Duggan, to approve the Minutes of September 15, 2022 as amended.

Vote: 3 yes, 0 no, 2 abstentions (Duggan, O'Brien). Motion passed.

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Adjournment

There being no further business, the meeting was adjourned at 10:18p.m.

Respectfully submitted,

Joan Rice
Secretary