

**HAMPTON PLANNING BOARD**

**MINUTES**

**November 3, 2021 – 7:00 p.m.**

**PRESENT:** Tracy Emerick, Chair  
Fran McMahon, Vice Chair  
Alex Loiseau, Clerk  
Ann Carnaby  
Keith Lessard  
Brendan McNamara  
James Waddell, Selectman Member  
Jason Bachand, Town Planner  
Laurie Olivier, Office Manager/Planning

**ABSENT:**

**I. CALL TO ORDER**

Mr. Emerick commenced the meeting by leading the Pledge of Allegiance and introducing the Planning Board members.

It was noted that the applicant for 886 Lafayette Road (both applications) wishes to be continued to the December 15, 2021 Planning Board meeting.

**MOVED** by Mr. McMahon.

**SECOND** by Mr. McNamara.

**VOTE: 6 – 0 – 1 (Lessard/absent).**

**MOTION PASSED.**

It was noted the applicant for 210 Woodland Road wishes to be continued to the Planning Board's December 1, 2021 meeting.

**MOVED** by Mr. McMahon.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

It was noted that the applicant for 61 High Street wishes to be continued to the January 5, 2022 Planning Board meeting.

**MOVED** by Mr. McMahon.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**HAMPTON PLANNING BOARD**

**MINUTES**

**November 3, 2021 – 7:00 p.m.**

It was noted that the applicant for 465, 467 & 469 Ocean Blvd wishes to continue (both applications) to the January 5, 2022 Planning Board meeting.

**MOVED** by Mr. McMahon.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

It was noted that the applicant for 144 Ashworth Avenue; 6, 8 & 10 Riverview Terrace & 6 Johnson Avenue wishes to continue to the December 15, 2021 Planning Board meeting.

**MOVED** by Mr. McMahon.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**II. ATTENDING TO BE HEARD**

**III. NEW PUBLIC HEARINGS**

**21-045 886 Lafayette Road (Continued to December 15, 2021 – see above)**

Map: 71 Lot: 3

Applicant: John & Amy Simmons, Trustees

Owners of Record: JA Simmons Revocable Living Trust

Site Plan: Raze existing commercial building & build a new building with new parking area.

Waiver Request: Section IV Subsection D.2.VI for light only and Appendix E Section:

Landscaping & Lighting, #12

**21-046 886 Lafayette Road (Continued to December 15, 2021 – see above)**

Map: 71 Lot: 3

Applicant: John & Amy Simmons, Trustees

Owner of Record: JA Simmons Revocable Living Trust

Wetlands Permit: Raze existing building; construct commercial building and porous pavement parking area. New building to have daylight drain for foundation within 50' wetland buffer

**21-049 210 Woodland Road (Continued to December 1, 2021 – see above)**

Map: 96 Lot: 4

Applicant: Michael Fyrer & Amanda Wlodyka

Owner of Record: Same

Wetlands Permit: Proposed new shed (8' x 16') to be placed within wetland buffer.

## HAMPTON PLANNING BOARD

### MINUTES

November 3, 2021 – 7:00 p.m.

#### IV. CONTINUED PUBLIC HEARINGS

**21-019 61 High Street** (continued from April 7, 2021, May 5, 2021, June 2, 2021, July 7, 2021, September 1, 2021, & October 6, 2021) (**Continued to January 5, 2022 – see above**)

Map: 161 Lot: 17

Applicant: Shane Pine

Owner of Record: GMC Group Limited Partnership

Site Plan (Amended): Propose to make outdoor patio space (previously approved for Covid-19) permanent.

Waiver Request: Section V.E. Detailed Plans.

**21-011 465, 467 & 469 Ocean Blvd** (continued from July 7, 2021, August 4, 2021, September 1, 2021, September 15, 2021 & October 6, 2021) (**Continued to January 5, 2022 – see above**)

Map: 266 Lots: 31, 32 & 33

Applicant: RJS Consulting, LLC (Attn: Rick Smith)

Owners of Record: Elaine & Frederick Ayotte (465); J. Hunter Properties (467) & The Stephen LaBranche Living Trust (469)

Site Plan: To construct residential condominiums with associated parking at 465 & 467 Ocean Boulevard (to be merged) and to re-build parking area on 469 Ocean Blvd.

Waiver Request: Section V.C. Application Fees & IV.D.vi Lighting. (See 21-031 Wetlands Permit)

**21-031 465, 467 & 469 Ocean Blvd** (continued from July 7, 2021, August 4, 2021, September 1, 2021, September 15, 2021 & October 6, 2021) (**Continued to January 5, 2022 – see above**)

Map: 266 Lots: 31, 32 & 33

Applicant: RJS Consulting, LLC

Owner of Record: Elaine & Frederick Ayotte (465); J. Hunter Properties (467) & The Stephen LaBranche Living Trust (469).

Wetlands Permit: Replace existing asphalt behind 469 Ocean Blvd with porous pavement. Small portion of work is within the 50' Wetland Conservation District. (See 21-011 Site Plan)

**20-060 144 Ashworth Ave; 6, 8 & 10 Riverview Terrace & 6 Johnson Ave**

(continued from April 7, 2021, May 19, 2021, July 7, 2021, July 21, 2021, September 1, 2021, October 6, 2021, & October 20, 2021) (**Continued to December 15, 2021 – see above**)

Map: 293 Lots: 65, 66, 73, 72 & 71

Applicant: Zoo Property Management, LLC & Albert Fleury

Owner of Record: Same

Site Plan: Merging of lots 66 and 73 to expand the existing restaurant (Wally's Pub). New four-season addition to include additional bathrooms, additional dining space & abundance of air flow for patrons.

Note: Waiver Request: Section V.E. Detailed Plans was denied by the Planning Board on April 7, 2021.

**HAMPTON PLANNING BOARD**

**MINUTES**

**November 3, 2021 – 7:00 p.m.**

**V. CONSIDERATION OF MINUTES**

**MOVED** by Mr. McMahon to accept and approve the October 20, 2021 Minutes.

**SECOND** by Mr. McNamara.

**VOTE 6 – 0 – 1 (Loiseau)**

**MOTION PASSED.**

**VI. CORRESPONDENCE**

**VII. OTHER BUSINESS**

• **Proposed 2022 Zoning Articles**

Mr. Bachand noted that three of the four Zoning Amendments discussed at the last meeting have been posted for public hearing with notice also published on the Town website. They are in force. He noted there was a great meeting with the Conservation Commission last week to discuss a couple of the amendments. They are offering ideas on other amendment involving the Wetlands Conservation District prohibited and permitted uses. Mr. Bachand expects to come back with incorporated comments on November 17<sup>th</sup>.

Mr. Bachand discussed the amendment for Conservation Coordinator enforcement authority. The Conservation Commission requested an Article be prepared to give the Conservation Commission Coordinator enforcement authority with regard to violations of the Wetland Conservation District Ordinance. Under Special Provisions, 2.3.7.E of the Wetlands Conservation District Ordinance, it would also name the Conservation Coordinator as an enforcement authority.

This enforcement power of the Conservation Coordinator would be effective only with regard to violations of Section 2.3 Wetlands Conservation District Ordinance. Mr. Jay Diener, Conservation Commission said we hope we never have to use this. The Conservation Commission Coordinator, he noted, that position/person is the first one to hear of violations. This added responsibility will also assist the Building Department.

Mr. Emerick asked if she will be armed. Power and teeth were discussed. Time and training. Mr. McMahon asked what actually is the authority. It was noted it would enable the deliverance of cease-and-desist orders. Mr. Waddell will vote against this. It is adding an enforcement position. It needs a definition. It needs more work before it gets voted on. It needs to go to the Board of Selectmen. Mr. Emerick said we are not an enforcement board. Mr. Bachand said we have authority over preparation and holding public hearings on Zoning Amendments. This item is specified in the Zoning Ordinance. Mr. Diener said it gives the Town authority to designate an officer. Mr. Emerick wants this recommended by the Board of Selectmen.

## HAMPTON PLANNING BOARD

### MINUTES

November 3, 2021 – 7:00 p.m.

Mr. Lessard does not think our Conservation Coordinator should be placed in adverse positions. The Building Department should have enough staff to take care of this. Mr. Lessard thinks the Conservation Coordinator should be there to help guide the process and the applicants. Mr. Lessard does not want her to be an enforcement officer. Mr. Lessard prefers a more positive conservation person getting through the process.

Mr. McMahon said if she sees a violation, can't she go to the Building Department and ask for enforcement. Mr. Diener has no doubt that she has the ability to take on this role. She would not put herself in a dangerous situation.

Mr. McNamara thinks it should go to the Board of Selectmen. He noted things do slip by. People are getting CO's without completing what was on the plan and that have stipulations. Some things do not get rectified. He knows there are many times where Certificates of Occupancy are given before they should be and it's in the Wetlands District. Mr. Waddell should speak to the Selectmen. Mr. Emerick does not like the transfer of line of authority. We are not an enforcement board.

Ms. Carnaby asked if there is an interim step of discovery when somebody notices that there is an issue. She can see the Conservation Coordinator sending out an initial letter saying you are in violation of something, and that is the reference of what the coordinator is doing. Any other enforcement does not belong with Conservation.

Mr. Diener said this is when work is done in clear violation. There are times when there is no time to write a letter; sometimes the work is already finished. We need a way to halt it before it is a violation. The Building Inspector is not always available. Mr. Diener agrees with Mr. Waddell. He agrees with taking this to the Selectmen. Mr. Emerick said this is the wrong Board to do it, but through the Board of Selectmen, that is the right way to do this. Mr. Diener does not know how the RSA is worded. It was reiterated that the Planning Board has no enforcement ability. Mr. Waddell said we need clarity.

Mr. Bachand said the Zoning Ordinance spells out enforcement of the ordinance and those responsible, etc. He feels it must appear in the Zoning Ordinance.

Mr. McNamara said it should go back to the Board of Selectmen. There will be five more voices with opinions to come back to the Planning Board.

Mr. Emerick said if the Board of Selectmen makes the Conservation Coordinator part of the Building Department, it would be covered. That's what they would have to do. It's up to the Selectmen to delegate. He is not saying it's not a good idea.

Mr. Emerick said this needs to be revisited. Mr. Lessard said he supports having the Building Department do enforcement. Mr. McNamara wants to hear what the Selectmen have to say.

## HAMPTON PLANNING BOARD

### MINUTES

November 3, 2021 – 7:00 p.m.

Mr. Diener said he will go to the Board of Selectmen. Is there a chance we (Conservation Commission) could get support from the Planning Board on this was asked. Mr. Emerick said we cannot grant the authority to enforce.

Next, Mr. Bachand discussed a mobile food service vendor amendment. The Town Manager requested that he work on this. This would allow mobile food service vendors on private property, but only for charitable purposes and special events. One would need to receive Board of Selectmen approval first. Mr. Bachand discussed recent challenging situations due to the lack of such zoning language: The James House had a fundraiser and wanted a food truck; The Historical Society wanted to have a pulled pork truck rather than a pig roast; it's in the RA Zone, they had to do this on nearby Town land instead. Another example of a food truck feeding the homeless was discussed. This amendment has tight restrictions. They will not pop up everywhere. It is limited to charitable purposes and special events receiving prior approval. If someone wants a food truck on Town property, they have to go to the Board of Selectmen. That doesn't change. The Building Inspector also has to sign off per this amendment. The table of uses was discussed.

It was noted Town Manager, Jamie Sullivan, was satisfied with this Zoning Amendment as written. One would have to go to the Board of Selectmen for each event.

Mr. McNamara discussed the first sentence. The Secretary of State and the Town Board of Selectmen, both require that already. If required under the RSA, Mr. McNamara asked why does it say "if" at the beginning. Mr. Bachand noted that Attorney Gearreald said to say "if" required as they were discussing this amendment. Mr. McNamara said to change to "as" required. Change "if" to "as". You can't get around it.

Either strike the whole first sentence or change "if" to "as" was asked. Mr. Bachand's recommendation is to change "if" to "as". The Board agreed.

Mr. McMahan asked if charitable purposes is defined anywhere. Special events also. Mr. Bachand said the protection is that it has to first get approval from the Board of Selectmen.

Mr. Waddell what happens if a charity wants a one-day liquor license. It could be a gray area.

Mr. Loiseau wants it to include wording regarding non-profit special events. He does not want to see for-profit road races coming in. He is fine with it, i.e. the big picture. Until we change the ordinance – he wants it more specific as far as non-profit or charity events. The current Board of Selectmen knows what the intent is, but future boards may not.

Mr. Lessard said what if a non-profit brings in a truck and then charges for profit. They keep the proceeds. Is that an okay thing was asked? Do profits from the truck go toward the

## HAMPTON PLANNING BOARD

### MINUTES

November 3, 2021 – 7:00 p.m.

charity. It's a slippery slope. What if schools hire Lexi's truck to come down and we pay them to feed teachers and students on a field day. It's a special event.

Mr. McNamara asked about the Code and RSAs; the State wants to be paid on profits of a particular day. The Board discussed all money going back to a special event or charity.

Mr. Waddell said profits are usually split; non-profit gets 'x' amount of money and other company gets 'x' amount. Mr. McNamara discussed beer tents and races.

Mr. Loiseau said when a road race comes in; it's a benefit to the Town. Renting parking lots and bringing food trucks into the area. Mr. Loiseau does not want to see that. Mr. Bachand said they cannot do this in the BS Zone, as written.

Mr. Emerick discussed families having birthday parties; an ice cream truck shows up, parks in the street, on Town property, but then they pull into the driveway of the party.

Mr. Emerick thinks it's fine. Mr. McMahon does not - what about health inspections was asked. It was noted the inspector would have to sign off also.

Mr. Waddell asked if they need to have a license. Mr. Waddell is fine with it.

Ms. Carnaby said it's a toe in the door for food trucks in Town. This is our first written parameter. Parameters about the number of food trucks depending on size of event or location. Three food trucks to one party. Ms. Carnaby wonders if we should think about the number of food trucks at any event.

Mr. Bachand said let's bring this to public hearing. We can look at it again next year to see how it's working out. He will make Mr. McNamara's change also. Mr. Lessard does not want food trucks competing with local businesses. He wants to protect local businesses.

Everyone on the Board wants this to move forward.

Next, Mr. Bachand discussed a proposed ordinance on the keeping of chickens. This comes up in the Building Department often. The Building Inspector receives a lot of calls on this. Five chickens; roosters are prohibited is stated. However, it is not codified.

Are pre-existing chickens permitted was asked.

Mr. Lessard had some comments:

He believes at least 15,000 s.f. of lot area is too limited.

It says 5 chickens, but he would like this to go up to 6 chickens.

## HAMPTON PLANNING BOARD

### MINUTES

November 3, 2021 – 7:00 p.m.

Henhouses with a 3 square foot minimum per hen is stated; he believes it should be a 4 square foot minimum.

Composting - 3 cubic feet stored on the lot. It should meet the setbacks.

Fencing – It is not requiring any but they have to get a permit. For the minimum of size of the pen, if they do have a pen, it should be free range chickens with 25 square feet per chicken. For example, it is 125 square feet if a minimum of 5 chickens. That is free range.

We can go up from the minimum. 2' x 2' crib for chickens was noted.

Ms. Carnaby discussed Section 4.d. feed securely stored and protected from elements - and vermin. (she said to add 'vermin').

Mr. Bachand discussed one more zoning item. The Aquifer Protection District boundary was discussed at the last meeting, and he wanted to follow up with the Board this evening. The decision at the last meeting to take a comprehensive look at the boundary issue and prepare an amendment for the 2023 warrant was discussed. On Monday, Mr. Bachand spoke with Jenn Rowden with the RPC about this issue. If the RPC is awarded a grant (for Local Technical Assistance for Drinking Water Protection), we will be working with them on the project. Ms. Rowden believes that the Board's idea to look at this subject comprehensively for the 2023 warrant, while stressing the importance of prior public outreach and education, is reasonable. Ms. Rowden also emphasized not waiting too long to do this. Mr. Bachand agrees and strongly advises against that as well. Whether or not the RPC gets the grant, he said we will need to do something with this next year. North Hampton was discussed - they started their process early.

The Board could place conditions on a project if one came up just outside of the existing Aquifer Protection District, as provided for in the Site Plan and Subdivision Regulations. Time for outreach and education along with a comprehensive update, rather than changing boundaries with only a month and a half (approximate) timeframe to figure it out, is the right thing to do. Aquarion involvement was discussed.

Mr. Bachand said we don't want to rush and pull properties in without thought and research. Our current aquifer district boundary almost mirrors wellhead protection areas shown on a map provided by Ms. Rowden. We will be taking a closer look at the mapping (wellhead protection areas and aquifer transmissivity) as we get into this next year.

Mr. Emerick noted that there could be some parcels moving out of the Aquifer Protection Zone, and others moving into the Aquifer Protection Zone that would be made non-conforming. We need to be very cautious.

Mr. Bachand suggested that the Board may wish to consider establishing a review committee early next year.

**HAMPTON PLANNING BOARD**

**MINUTES**

**November 3, 2021 – 7:00 p.m.**

**VIII. ADJOURNMENT**

**MOTION** by Mr. McMahon to adjourn.

**SECOND** by Mr. McNamara.

**VOTE: 7 – 0 – 0**

**MOTION PASSED.**

**MEETING ADJOURNED: 8:00 p.m.**

Respectfully submitted,

Laurie Olivier, Office Manager/Administrative Assistant

**\*\*PLEASE NOTE\*\***

**ITEMS NOT CALLED OR IN PROGRESS BY 10:00 P.M.**

**MAY BE CONTINUED TO THE NEXT SCHEDULED MEETING**