

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES – Draft
April 17, 2014

Members Present

Bryan Provencal, Chairman
Bill O'Brien, Vice Chairman
Norma Collins, Clerk
Ed St. Pierre
James Sculley (Alternate)

Others Present

Kevin Schultz, Building Inspector
Joan Rice, Secretary

Chairman Provencal called the meeting to order at 7:05 p.m.

The Pledge of Allegiance was said.

Board members were introduced.

PETITION SESSION

08-14...The continued petition of New Cingular Wireless PCS, LLC (AT&T) for property located at 83 Ocean Boulevard seeking relief from Article XVI, Section 16.2 to propose wireless communications facility to be located on and within the existing building on the property, including without limitation up to twelve (12) multi-band panel antennas (four per sector) mounted behind radio frequency compatible material with associated remote radio heads (RRHs), surge arrestors, cables and fiber; radio communications and electronic equipment located within a proposed equipment room within the building, fiber-optic trunks, DC power trunks and RET lines, up to three (3) GPS antennas located attached to the existing parapet, air conditioning condenser located on the roof of the building, gas generator and related facilities on a concrete pad for back-up power in the event of an emergency and related underground gas line; stockade fence surrounding the proposed generator, and proposed underground electronic and telephone utilities and related conduits. All as more fully depicted on the plans submitted herewith. This property is located on Map 290, Lot 146 and in the BS Zone.

Representatives from AT&T came forward. Mr. O'Brien said he felt a motion to withdraw should be made. AT&T said their concern about withdrawing is that they would like a finding from this board so they can move on to a building permit.

Questions from the Board

Mr. St. Pierre said he did not feel he could vote on this petition because he feels control is being taken away from this board. Mr. St. Pierre said he would abstain on this petition. Mr.

O'Brien noted that if a permit is requested, it will be granted. Mr. O'Brien said he would also abstain.

Chairman Provencal said this petition could be withdrawn without prejudice and petitioners could then request a building permit.

Mr. Schultz said there is a new state statute, RSA 12-K, that takes all authority away from land use boards to have any say in wireless communications. This is a civil matter. This board has no jurisdiction to hear this petition and vote on it. Mr. Schultz said the petitioners have two choices. The first is to withdraw and the second is that an administrative decision could be made saying a variance is not needed. Mr. O'Brien said choice #2 is the better decision. Mr. Schultz agreed and said based on the new state statute this petition does not need to be heard and no variance is needed. Awareness of the statute was obtained after application.

AT&T made a request to withdraw without prejudice.

Moved by Ms. Collins, seconded by Chairman Provencal, to allow petitioners for Petition 08-14 to withdraw without prejudice.

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

11-14...The petition of Tim Polychronis for property located at 8 Dumas Ave. seeking relief from Article 1.3 and IV as to 4.5.2 to replace existing deck structure due to aging and deterioration of its current state. This is also a safety concern. Deck is currently 30' x 8'. Would like to expand it to 30' x 10'. This property is located on Map 256, Lot 11 and in the RA Zone.

Tim Polychronis came forward. He said this will result in a safer structure and will not interfere with side properties. Mr. Polychronis went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre said safety is important and he did not see any harm in adding an extra two feet. Mr. O'Brien said he would like the stairs to be added to the drawing and resubmitted.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. St. Pierre, seconded by Mr. O'Brien, to grant Petition 11-14 provided that the petitioner updates the plot plans to show the location of the stairs.

Chairman Provencal 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.

12-14...The petition of David L. and Elizabeth M. Cargill for property located at 501 Winnacunnet Rd. seeking relief from Article #2.3.7(C); 4.2 (incl. fn 22); 4.3, 4.5.1, 4.5.2 to divide a nearly 61,500 square foot tract containing an existing 1-family and an existing 2-family residence into two lots so that each building would be on its own lot, where variances are needed for frontage, lot width, interior side setbacks and wetlands conservation district lot area. This property is located on Map 222, Lot 117 and in the RB Zone.

David Cargill and Attorney Peter Saari, Casassa & Ryan, came forward. Attorney Saari said a letter has been received from an attorney relative to this petition and this should be reviewed. Therefore they would like to continue next month.

Mr. O'Brien noted that petitioner was denied 2.3.7(C) several years ago. Mr. Cargill said substantial changes have been made since then.

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to continue Petition 12-14 at the May 15, 2014 meeting at which time it will be first on the Agenda.

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

13-14...The petition of Peter D. and Madaleen L. Ross for property located at 91 Levitt Road seeking relief from Article #4.1, 4.1.1, and footnote 22 to subdivide a 27,485 square foot lot with 257.57 feet of frontage into two lots, one with an area of 13,780 square feet and 125 feet of frontage and the other with an area of 13,705 square feet and 132.57 feet of frontage, where one of the lots is just short of enough depth to be able to contain a 93-3/4 foot square. This property is located on Map 205, Lot 11A and in the RA Zone.

Peter Ross and Attorney Peter Saari came forward. Attorney Saari said each of the proposed lots would easily meet the frontage and lot width requirements and would be only a little short in area as almost all of the other lots shown on the Subdivision Plan. Each of the proposed lots would be comparable to and in most cases larger than the other lots in the subdivision. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre said the proposed lot line dividing these lots seems to be skewed. Attorney Saari said the petitioner wanted to keep the lot sizes the same.

Ms. Collins asked if the intent is to construct one residential home on each lot. Attorney Saari said that is correct.

Comments from the Audience

Timothy Plouffe, 88 Levitt Road, said he has lived in the neighborhood for 34 years and this has always been a single lot. He said he feels it should stay that way.

Back to the Board

Moved by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 13-14 subject to the provision that there will be one single-family home on each lot requiring no further variances.

Chairman Provencal 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.

BUSINESS SESSION

Rules of Procedure

Mr. O'Brien presented the Rules of Procedure with some changes in documentation.

Moved by Mr. St. Pierre, seconded by Ms. Collins, to accept the Rules of Procedure dated April 17, 2014 as amended.

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

Approval of Minutes

Moved by Mr. St. Pierre, seconded by Mr. O'Brien, to approve the Minutes of February 20, 2014 as amended.

Vote: 3 yes, 0 no, 2 abstentions (Collins, Sculley). Motion passed.

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Moved by Ms. Collins, seconded by Mr. St. Pierre, to approve the Minutes of March 20, 2014 as amended.

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

Other

Mr. O'Brien referred to the letter received from Ms. Scheffert in regards to Petition 08-14. He said his response would be the this Board has no authority regarding wireless communications. The Board would not have entered into any of these discussions that she brings forward. They are a civil matter.

Adjournment

Moved by Mr. O'Brien, seconded by Ms. Collins, that the meeting be adjourned at 8:54 p.m.

Respectfully submitted,

Joan Rice
Secretary