

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES – Draft
June 15, 2017
7:00 PM
Selectmen’s Meeting Room Town Hall

Members Present:

Bill O’Brien, Chairman
Norma Collins, Clerk
Tom McGuirk
Brian Provencal
Ed St. Pierre

Chairman O’Brien called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman O’Brien introduced the members of the Board.

PETITION SESSION:

Chairman O’Brien announced that the applicant for **Petition 08-17** has elected to withdraw from this Agenda in that they have decided not to go forward with the garage construction.

Moved by Mr. Provencal, **Seconded** by Mr. St. Pierre to accept the withdrawal without prejudice.
Vote: 5 in favor, 0 opposed. **The Motion passed unanimously.**

16-17: The continued petition of 19 Ocean Boulevard, LLC for property located at 19 Ocean Boulevard seeking relief from Article 4.5.1 to add two awnings in the front of the building. This property is located on Map 296, Lot 80 in the BS Zone.

Mr. Brendan McNamara, 487 Ocean Boulevard appeared on behalf of 19 Ocean Boulevard LLC, as the applicants were unable to attend. Mr. McNamara stated that two awnings have been added to the building owned by 19 Ocean Boulevard LLC. He reviewed the five criteria noting that the awnings are currently in place and further noted that there had been some confusion on property lines. There was discussion on parking and it was noted there is 10 feet from the sidewalk to the awning. Cars now are allowed parking for 10 minutes with horizontal parking. Seating outside will still be available.

Further, he stated, a Change of the Use was granted by the Planning Board, that the sidewalk is artificially wide, and there is currently no parking allowed there other than the above 10 minute parking.

Comments from the audience.

Mr. Henry Boyd, Millennium Engineering, stated he was hired to prove where the parking line was located, stating that the property line was staked and is defined.

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

Moved by Mr. Provencal, **Seconded** by Mr. St. Pierre to approve Petition 16-17.

Vote: 5 in favor, 0 opposed. **The Motion passed unanimously.**

17-17.The petition of Lambros Tsoumbanikas, Trustee of the Tsoumbanikas Realty Trust for property located at 65 Lafayette Road seeking relief Art. I, Sec. 1.3; Art III, Sec. 3.26 and Sec 3.43 to operate a motor vehicle repair and service shop within the commercial building to be constructed on site and offer, on site for sale or trade, used motor vehicles. (Dealer per Sec. 4.43.)

The applicant and Attorney Steve Ells appeared on behalf of the Petition which is located on Map 236, Lot 1 in the G Zone. Also appearing is Henry Boyd, Millennium Engineering. This matter has been before the Planning Board for a site review to construct a commercial building on the property. It is proposed to operate a motor vehicle repair and service shop within the commercial building to be constructed on site and offer on site for sale or trade, used motor vehicles. Attorney Ells spoke of the variances required.

Mr. Boyd explained what is proposed and provided renderings of what the building will look like and noted there is a lot of parking with 66% of the lot having a sealed surface. It is proposed to reduce the sealed surface by 20%. Mr Boyd further explained that this site runs between two tidal areas as shown on the map with a paved or concrete slab formerly used by Jerry's Restaurant. Also, there are several openings to the highway however, it is proposed to channel into one opening.

Mr Boyd also stated that, with the proposal to do auto repair within the proximity to the marsh, the building would have to be designed with a moat within the building with parking of the cars for sale outside of the building. He pointed out that there are about 300 parking spaces adjacent to the salt marsh. There is a berm now in place, but the pipes have been blocked up. He is not in favor of opening the pipes, but perhaps opening the pipes allowing them to drain after going through stone and grass with an installed back flow device. There will be spill prevention plans that will satisfy DES and the Conservation Commission making the environment as safe as possible.

Chairman O'Brien commented on an error on the application which noted the 50 foot buffer with wetlands going through the property. Mr. Boyd said the whole site is within the 50 foot buffer and the plans that went to the DES have the breakouts of the different areas. Mr. Boyd also said that the septic system would have to be redesigned. Further, with this project, there would be minimal water usage and minimal disposal of septic waste.

Attorney Ells then reviewed the 5 Criteria as presented to the Board on the Petition for Relief.

Discussion between the Board and Applicant.

Mr. Tsoumbanias stated that this will be a small shop with little traffic. It will be a cement block building with minimal oil spillage. He also noted he has a N.H. Dealer's License.

Mr. St Pierre commented that in the photos, provided from May 29th, the property was full of water and he is concerned, also, about having cars outside which may have oil drips and water pump issues.

Mr. Tsoumbanias responded that the water in May was from a combination of rain and storm water, not tidal water. He also commented that when the car goes into the shop to be prepared for sale, it will be fixed on the inside the building before going out on the lot for sale. He also stated he is planning to raise the site.

Mr. Boyd commented that most of the flooding was caused from run off on the highway as the berm impounds the water so it funnels to the lowest spot on the back of the lot. There is a deeper water table than imagined in that they got 18 inches in places. He also noted that there is work to be done for the Planning Board as the grades cannot be raised to a point where they would affect the neighbors.

With regard to the question by Mr. St. Pierre about the septic system, Mr. Boyd said what is currently there has failed and would need a new design with a new pump line to lift by force main to a D Box.

Mr. St. Pierre also questioned the water quality issue and it was explained there are two wells on the property, water is coming out now, but the quality has not been determined.

Mr. Provencal asked if there will be a buildup where the cars are parked outside. Mr. Boyd said that area will be lifted to meet the grades of the State highway and water on that part of the road is from rain not high tide.

Ms. Collins noted that there is a lot of wetland there, that none of those businesses have Town sewer, and the septic system would have to be above the water table. Mr. Boyd stated that the existing businesses have septic systems that function with approved designs. The DES has approved the septic plans. Further, any other type of business would have a huge water demand, whereas this project's system would be able to treat smaller amounts of water.

Mr. St Pierre requested information regarding this project from the Conservation Commission.

From the Audience.

Mark Gearreald, Hampton Town Attorney, stated he was speaking on direction and for the Town Manager and Board of Selectmen. He referenced a letter sent by the Town Manager to the Board and the applicant on June 9, 2017 regarding this Petition.

Attorney Gearreald outlined the points in the letter noting that attention should be given to this site being in the G Zone which allows uses including retail sales, banks, offices, and professional establishments. The G Zone specifically prohibits the use for a motor vehicle shop or the selling or trading of motor vehicles. This prohibition was established in 1987 by the Planning Board.

Attorney Gearreald also noted that with garage repairs, there will be used oil, hazardous waste, etc., and this would be exposing a site which includes the Taylor River and salt marsh. Whether or not it comes from the tides, the river and marsh will be washed with the waters thus exposing these sites to the elements which should be avoided. The applicant is introducing something that has been expressly prohibited and substantial justice will not be done. He commented that there are other uses for this site.

With regard to dealing with the sales of unregistered motor vehicles, the Planning Board adopted in 1997 an Article to prohibit dealers from the General and other Zones. The Board's purpose was to discourage temporary used car lots from appearing along Route One. Route One is a gateway road into town and has a history of a former auto service/sales facility which negatively impacted this area. The Planning Board took action with the Ordinance to avoid the problems with oils, battery acids, etc. leaking and exposing the environment. In the spirit of the Ordinance, there would not necessarily be a hardship and there is nothing indicated about special conditions of the property.

Lastly, the Town is an abutter to the site directly across Route One and the Selectmen have standing to express the Town's position and attention should be given to the photographs taken by Conservation Coordinator, Rayann Dionne, and provided to the Board.

Mr. Boyd, on question by Mr. St Pierre, stated that there is an easement; however, it is unclear based on the deeds why the easement is necessary.

Rayann Dionne, Conservation Coordinator, Town of Hampton, provided a letter to this Board dated June 8, 2017. She spoke on the points expressed in her letter noting that as a part of the initial project review, this has not yet come before the Conservation Commission. She commented that the building meets the FEMA regulations; however, the biggest concern is what to do about the auto sales and repair. The redevelopment is a good idea, but not for such a risky use. This is a habitat that deserves protection. The site experiences rain events and flooding and the level shown for the parking lot is not above elevation. She is not convinced there will be no flooding. She stated it is important to understand that it does not take much to cause a problem to a sensitive environment. Her concerns are also with the septic system being inundated with water during large tides or storms and any flooding of the system could result in the system not to function properly.

Jason Bachand, Hampton Town Planner, stated that he would like to echo Ms. Dionne's and Attorney Gearreald's comments and because of the environmental risks, this use should not be permitted on this site. His sense from the Planning Board is of concern, and there are other appropriate uses for this property as shown in the Zoning Ordinance.

Attorney Ells, with respect to Attorney Gearreald's comments, stated that the 1987 Ordinance that junk yards and used car lots are specifically prohibited is why the applicant is before the Board. He stated that this is a sensitive area, but what is being proposed is not a high risk in that the cars being put out for sale will be superior to those 300 cars parked within a 500 foot radius of this site. Further, 15 or 20 cars will not make any difference as the site will be prepared to have the moat inside. He also commented that Ms. Dionne's letter, it should have been provided in advance, thus giving the applicant time to review. He also noted the 1987 Ordinance should be fine-tuned. He suggested continuing the matter for another month in order to review the materials provided to him and the applicant this evening.

Mr. Provencal stated there is a problem with the site being used as a garage.

Mr. Tsoumbanikas stated that he has no problem continuing for a month. Further, it seems everyone's concerns are with the cars being parked in an area which could damage the eco system. He proposed putting the 15 -20 vehicles inside the building at night, and back outside in the morning. He also noted with regard to battery acid, that there are no leaking batteries anymore.

Mr. Boyd stated that he would like to hear what the Conservation Commission has to say on this Petition and noted the floor of the building interior could be redesigned and the parking area could be elevated.

Moved by Mr. St. Pierre, **Seconded** by Mr. Provencal, to continue discussion on this petition to July 20, 2017 meeting, first on the agenda.

Vote: 5 in favor, 0 opposed **The motion to continue Petition 17-17 to the July 20, 2017 meeting passed unanimously.**

18-17 – The petition of Neelima Ravi, DMD, Oceanside Family Dental for property located at 421 Lafayette Rd. seeking relief from Article 2.8 (G.1.3) to allow the construction of a building for the applicant’s dental practice where a small portion of the building would be within the front setback. This property is located on Map 160, Lot 24 in the TC-H Zone.

Attorney Peter Saari appeared on behalf of the Applicant.

Mr. McGuirk questioned if this plan is permitted in this area as it does not seem to be a part of the creation of a walking business district. Further, whether this use is permitted in the area citing medical vs professional use. He commented that the Board needs guidance on this matter and proposed holding off the hearing for another month.

Chairman O’Brien referred to the variance requirements back 2 – 3 years ago for this proposal. He noted that the only variance needed is G13. This proposal, he commented, is totally different than what was proposed before. Further, this is the Town Center and the current design is not being presented as one belonging in a Town Center.

Attorney Saari referred to the handicapped ramp and questioned if this has to be accounted for. Chairman O’Brien said it would be preferable for people using a ramp from the rear up to the door between two parking spaces; however, there may not be enough space in the back. The ramp may require a variance.

Attorney Saari related this proposal may have been rushed more than it should have been.

Chairman O’Brien also pointed out that the setback, originally, was 10 feet back; however is now down to 2 feet.

Comment from the audience.

Mr. Wagner of Market Street Architects, stated that accessibility is needed from both sides, front and back, due to ADA regulations. There are no stairs required from the back, but the front is higher and needs the ramp for accessibility.

Back to the Board.

Chairman O’Brien pointed out that there are no ramps on the other neighboring buildings and stated that it will be necessary to move the building back if a ramp is necessary on the front. He

recommended deferring this matter to Building Inspector Schultz on what is needed on this application.

Additionally, Chairman O'Brien stated that if one is looking at the drawing correctly, the back door looks to have 4 feet from the building to the beginning of a parking space. Attorney Saari stated his is a side setback, four feet from where the parking spaces end to the building and, if the building is moved back, 4 feet would be gained, but the walkway would have to be between two parking spaces.

Mr. St Pierre noted that in the original proposal the front set back was 8 feet for the building with awnings.

Attorney Saari suggested a new application be submitted to the Board.

Moved by Mr. St. Pierre, **seconded** by Mr. Provencal, to allow the Petitioner to withdraw this petition without prejudice.

Vote: 5 in favor, 0 opposed. **The motion passed unanimously.**

19-17 – The petition of RAFF, 1094 Ocean Boulevard, LL, for property located at 1094 Ocean Boulevard seeking relief from Article 3.1.4.2 (including footnote 22) 4.3 and 4.7 to remove the two existing non-conforming buildings on the property, one of which would be constructed in compliance with all setback, height and sealed surface requirements that apply in a residence A. Zone this property is located on Map 80, Lot 2 and in the RA Zone.

The Applicant, Shaun Rafferty, for RAFF, and Attorney Peter Saari spoke to this petition and stated there is no existing lot of record and there is no deed which describes the lot. A plan of 1975 does show the lot which was formerly leased land. Mr. Rafferty stated that he chooses to keep two units on the lot, not two units per building.

Chairman O'Brien pointed out a plot plan was not submitted; however there is the ability to put the units somewhere on the lot as long as requirements are met. He further noted there is only one access road. He requested a drawing.

Mr. Rafferty stated that the existing curb cut will remain and that he proposes two attached townhouses with garages below, with entries above.

It was also pointed out that there are no deed restrictions, that the property was originally zoned RA, and the property next door is a single family within setbacks.

Mr. McGuirk stated that there are other two units in the area with seven motel rooms, and this property is cornered between a hotel and the town line.

Mr. Rafferty stated that the structure in place has not been well kept.

Chairman O'Brien stated that he feels comfortable if the applicant came in with a plan and a drawing of the proposed project, including dimensions showing where the houses would be on the plan. The Board agreed.

Moved by Mr. St. Pierre, **seconded** by Mr. Provencal to Continue **Petition 19-17** to the Meeting of July 20, 2017, second item on the Agenda with the condition that a plot plan and drawing of the proposed project be provided to the Board.

Vote: 5 in favor, 0 opposed. **The Motion passed unanimously.**

Approval of Minutes:

Minutes of May 18, 2017.

Moved by Mr. St. Pierre, **Seconded** by Ms. Collins to approve the Minutes of the May 18, 2017 Meeting as presented.

Vote: 4 in favor, 1 abstain (Mr. Provencal). **The Motion passed.**

Minutes of April 20, 2017.

Moved by Mr. St. Pierre **seconded** by Mr. McGuirk to approve the Minutes of the April 20, 2017 Meeting as amended by correcting the word to read "sewage" (surances"), 5th line from the bottom, page two.

Vote: 5 in favor, 0 opposed. **The Motion, as amended, passed unanimously**

By the Board: There was a brief discussion on term limits.

Non Public Session: Mr. St. Pierre requested the Board enter into a non-public session to discuss a personnel item.

At 9:27 pm, the Board voted to enter into a non-public session under RSA 91-A:3, II (b).

Moved by Mr. St. Pierre, **seconded** by Mr. Provencal to enter into a non-public session under RSA 91-A:3, II (b).

Vote: 5 in favor, 0 opposed. **The Motion passed unanimously.**

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Adjournment of Regular Meeting:

Moved by Mr. McGuirk, seconded by Mr. Provencal to adjourn the Regular Session of the Meeting at 9:29 p.m.

Vote: 5 in favor, 0 opposed. **The vote was unanimous.**

The Regular Session was adjourned at 9:29 p.m.

Chairman O'Brien thanked Channel 22.

Recorded, transcribed, and respectfully submitted by,
Anne Marchand, Substitute