

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
January 19, 2023**

Members Present

Bill O'Brien, Chairman
Anne Bialobrzeski
Nichole Duggan
Erica De Vries
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.

PETITION SESSION

47-22...The petition of 500 Lafayette LLC for the property located at 500 Lafayette Rd. The applicant is seeking to build a four 4 story 103-unit apartment building with associated parking. Applicant is seeking relief from Article II, Town Center District, Sections 2.8.C.1.D.1, 2.8.G.1.6, 2.8.g.1.10, 2.8.H.1; Article VI Parking Section 6.3.1; Article VIII Multi-family Dwellings Sections 8.2.1, 8.2.3, 8.2.6.

Tom Moulton, Applicant, and Attorney Tim Phoenix came forward. Also present were Eric Weinrib, Engineer, Chris Lizotte, Design and Paul Roy.

Chairman O'Brien said the Board would be looking at variances that the Applicant is requesting for this property. This Board goes according to the zoning ordinances and does not generate the ordinances. That is done by the Planning Board. The five criteria must be satisfied. This Board is not generating anything on its own.

Ms. De Vries said the Planning Board is the one who approves projects. The Board grants relief from the Zoning ordinance.

Attorney Phoenix noted that the Applicant has received a number of letters supporting the project.

Mr. Weinrib discussed technical issues. He said parking would be on one side of the new building and there would also be shared parking with the Old Salt. There would be access to the building from both Lafayette Road and Exeter Road. There will be a lot of green space. The building will be four stories.

Mr. Lizotte said there will be 103 apartments in the building. There will be a fitness room and club room on the first floor. Mr. Lazotte showed apartment floor plans and renderings of the outside. Ms. Bialobrzkeski asked about mechanics. Mr. Lizotte said they would sit on the roof, be only 2-3 feet high and be within the 51 foot building height.

Chairman O'Brien asked why they had to go to four stories at the roadway. Mr. Lizotte said there is six feet of grade change from Lafayette Road from the center of the site. It is not possible to lower the grade substantially because the sewer cannot be exposed. Chairman O'Brien said he did not understand why they did not consider going to three stories on that side. Ms. Bialobrzkeski said that if she owned that building she would be concerned that if somebody was going to take down that bank or build retaining walls, the integrity of the building might be in jeopardy. Ms. De Vries asked how that speaks to the five criteria. Ms. Bialobrzkeski said it would not be in the public interest.

Mr. Roy said he could assure the Board that they are not going to build something that will collapse. That wall will be designed in a manner that will make it a non-safety issue.

Attorney Phoenix said the main reason they need relief is because the current TCH zoning requirements are overly restrictive. Attorney Phoenix then gave examples from the Town Master Plan. These apartments will not overwhelm the schools and will be of great benefit to nearby businesses. Attorney Phoenix then went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. De Vries said the Applicant says it is economically unfeasible to build less than 103 apartments. Relief is needed from the height in order to build more apartments. Then the parking requirements will go to the max. It seems like a multi-layered argument and seems precarious. Ms. De Vries said she still did not see the hardship.

Screening from view of the apartment building was discussed. Ms. De Vries said she did not think there was sufficient screening for the abutting rail trail. Mr. Roy said there is a way to provide screening. Ms. De Vries again said she did not see the hardship. Attorney Phoenix said a lot has been under utilized that can be developed according to the Master

Plan but the zoning has not come up to it and that is the hardship. Ms. De Vries said she did not feel this makes a hardship.

Chairman O'Brien said there is a new Master Plan coming out and the Planning Board did update the zoning ordinances.

Regarding the shared parking Ms. De Vries said in that agreement it states your right to the parking spaces changes if the Old Salt's building purpose would change. The agreement then becomes null and void. Those 66 extra spaces do not exist in perpetuity and cannot be relied on. Attorney Phoenix said they feel the 185 spaces on their lot would be sufficient.

Chairman O'Brien noted lack of parking in the downtown area is the single thing that keeps people away.

Ms. De Vries said it is important to take into consideration health, safety and welfare. She said she was not sure about fire equipment having reasonable access. As for relief on height Ms. De Vries said she did not see what is so unique about that property that this relief is needed. One story less and this would not be needed.

Mr. Grady said parking would be his major concern.

Ms. Bialobrzewski said adequate parking is really important.

Chairman O'Brien asked if there were two elevators. Attorney Phoenix said that was correct. Chairman O'Brien said if you are in a particular part of the building it is a long walk to the elevator. Also the parking is strange. The Planning Board asks that spaces be numbered. So if a space is assigned to a certain apartment you could not park there.

Comments from the Audience

Danelle Bruce, Walnut Avenue, asked if government funding was being used. Mr. Moulton said no.

Ann Costello, North Shore Road, suggested using the land to the north for green space.

Charles Steele, Presidential Circle, said he felt only one entrance for a 103 apartment complex causes a safety issue. Ms. De Vries said as proposed there are two entrances.

Back to the Board

Attorney Phoenix said they don't deny this is an unusual request, but think it will be good for the Town, people who visit, etc. He said they believe parking will meet needs.

Ms. Bialobrzkeski again expressed concern over the hardship.

Attorney Phoenix said they would like to withdraw and do further investigation.

Moved by Ms. De Vries, seconded by Ms. Duggan, to allow Petition 47-22, 500 Lafayette Road, to withdraw without prejudice.

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

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

01-23...The petition of Harmony Energy Works for the property located at 478 Exeter Rd. The applicant is seeking relief from Article XVIII Sec.2.B Height. Requirement is not to exceed 8 feet above ground. Proposed is not to exceed 22 above ground. The property is located on Map 36, Lot 7 in the RAA Zone.

The Applicant was not present.

Moved by Ms. Bialobrzkeski, seconded by Ms. Duggan, to move Petition 01-23 to the end of the Agenda.

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

At this time Henry Boyd said the Applicants for Petition 06-23 would like to continue.

Moved by Ms. De Vries, seconded by Ms. Duggan, to continue Petition 06-23, 696 Lafayette Road.

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

02-23...The petition of Dubois Family Rev. Trust for the property located at 176 Kings Highway. The applicant is seeking relief from Article(s) 1.3 Expansion; of nonconforming use and 4.5.1 Front Setback. The Front Setback requirement is 20 feet. Proposed is 15 feet. The property is located on Map 168, Lot 35 in the RB Zone.

Henry Boyd said the Applicant is asking for a front setback relief. He wants to build two decks. Pavement will be removed and replaced with pavers. Mr. Boyd went through the five criteria and said he felt they had been met.

Chairman O'Brien asked if the deck on the first floor will be replicated on the second floor. Mr. Boyd said it would.

Questions from the Board

Ms. De Vries asked how deep the deck on the first floor would be. Chairman O'Brien said it would be 6.1 feet.

Ms. De Vries asked about the hardship. Mr. Boyd said the zoning ordinance creates the hardship. Ms. De Vries asked if the size of the lot is the hardship. Mr. Boyd said yes.

Comments from the Audience

John Zahoruika, 178 Kings Highway, said he supported the project. Any concerns he had were addressed by the Applicant.

Back to the Board

Ms. Duggan asked if the property gets a lot of water in the driveway. Mr. Boyd said with elimination of sealed surface this should be alleviated.

Ms. De Vries again asked about the hardship. Chairman O'Brien said it is because the lots are so small.

Ms. Bialobrzkeski said there was a deed restriction and she could not support this.

Mr. McGuirk said style is different now than 20 years ago. People want outdoor space.

Mr. Boyd said setbacks are important, but this setback is on the second floor and does not harm anyone in any way.

Moved by Mr. McGuirk, seconded by Ms. De Vries to grant Petition 02-23.

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

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

03-23...The petition of Calarage Realty LLC for the property located at 817 Ocean Blvd. The applicant is seeking relief from Article(s) 1.3 Expansion of a nonconforming use , 4.5.1 Front Setback, 4.5.2 Side Setback and 2.4.9.1 1 Foot Freeboard. The required is 20 Feet Front, 10 Feet Side and 1 Foot Freeboard, proposed is 4.3 Feet Front, 0.8 Feet Side and 0.25 Feet Freeboard. The Existing Front Setback is 0.5 Feet. The existing Side Setback is 0.0 feet. The property is located on Map 197, Lot 30 in the RA Zone.

Henry Boyd came forward. He said he was representing the Applicants. Mr. Boyd said currently the roof line on this property is a standard roof line. However, there is a zero setback. The Applicants hope to improve the structure. Mr. Boyd said he asked the builder and designer if they could improve the setbacks. They did. Change was minimal but in the right direction. The Applicants want to add a second story above the existing first story in the back and add a second story in the front. Currently there are massive concrete steps in front which will be eliminated. Sealed surface will be reduced by 1%. Mr. Boyd went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski asked if the footprint would be the same. Mr. Boyd replied that the structure would be the same but the roof bumps out.

Ms. De Vries asked if the roof would run parallel to the property line. Mr. Boyd replied that the building is parallel, but the roof has a bow in it and bumps out.

Ms. Bialobrzkeski said there are deed restrictions on these properties. Mr. McGuirk said they can remove the deed restrictions.

Moved by Ms. Bialobrzkeski, seconded by Mr. McGuirk, to grant Petition 03-23 conditional on obtaining RSA 41.14A modification to remove the 10 foot setback restriction.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

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

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

04-23...The petition of Kathleen and David Guselli for the property located at 20 Gill St. The applicant is seeking an Equitable Waiver from Article(s) 1.3 Expansion of nonconforming use, 2.3.4 D, 2.3.4 B3, and Article 4.5.2. The requirement is 12 feet, the actual is 7.81 feet. This is after the act relief for a building already constructed. The property is located on Map 223, Lot 39 in the RB Zone.

Mr. Boyd, representing the Applicants, said the Applicants believed they had all needed permits. The building was then constructed. Then the new Building Inspector told them they might need a DES permit and should talk to the Conservation Commission. The DES permit was to remove the shed. They did get a Wetlands permit after the fact. This is the result of an honest mistake. It is already done.

Questions from the Board

Chairman O'Brien asked why relief from 4.5.2. Mr. Boyd said they have no garage and 7 feet and 12 feet are required. Chairman O'Brien said that was incorrect. He said it was his understanding that if you don't have a garage but you have parking in front you only need 7 feet and 7 feet.

Chairman O'Brien said there are two sets of stairs coming out of the house and it doesn't show on the plan. Chairman O'Brien asked Mr. Boyd to make sure this shows.

Ms. De Vries asked if it was correct that the Applicants built within 6-1/2 feet of the Wetlands without a Wetlands Permit. Mr. Boyd said that was correct.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. McGuirk said the old house was awful. What the Applicants have done is respectful and very well designed.

Moved by Mr. McGuirk, seconded by Ms. Duggan, to grant an Equitable Waiver for Petition 04-23, 20 Gill Street.

Chairman O'Brien asked the Board if they felt the four criteria necessary for an Equitable Waiver had been met. All members agreed that they had.

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

05-23...The petition of Chris & Elaine Clarke for the property located at 14 Kings Highway. The applicant is seeking relief from Article(s) 1.3 Expansion of a nonconforming use. 4.5.1 Front Setback, 4.5.2 Side Setback. The required is reconstructed structures must conform, 20 Feet Front and 7 Feet/12Feet Side . The proposed is, encroaching stairs removed. Stairs 2.67 Feet Overhand 1.43 Feet at corner and 5.35 overhang. The property is located on Map 223, Lot 160 in the RB Zone.

Elaine Clarke, Applicant, and Attorney Tim Phoenix came forward. Attorney Phoenix said they received this same relief last year. The project was then started. A high windstorm took the roof down and the problem with the existing foundation was found. The foundation was brought up to code. When relief was received last year it was felt that it was okay to use the existing foundation and walls. Henry Boyd said an argument was made for an Equitable Waiver but it did not get noticed. Attorney Phoenix went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski said that she thought this was an Equitable Waiver because they should have been required to provide structural confirmation. This was an error.

Mr. McGuirk said he was looking at the picture of when the house collapsed. He said that sometimes people let a house collapse and then a brand new house goes in. Attorney Phoenix assured the Board that there was no such intent here.

Ms. Bialobrzkeski asked if the Applicants were asking for exactly the same relief as requested before. Ms. Clarke said that was correct.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Chairman O'Brien asked if there were any changes on the interior. Ms. Clarke replied that now all three bedrooms are on the first floor and the elevator has been eliminated.

Ms. De Vries asked about the hardship. Ms. Bialobrzkeski said the hardship was the confirmation that the existing foundation was suitable for what they wanted to do.

Chairman O'Brien asked Mr. McGuirk if he was comfortable with granting this petition as it now stands. Mr. McGuirk said he was.

Moved by Mr. McGuirk, seconded by Ms. Duggan, to grant Petition 05-23.

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

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

[“ **06-23**...Note – during an earlier meeting break, when the cameras were not on, the applicant’s attorney approached the Board and requested that Petition 06-23 be continued to the February meeting ... that request was granted.”]

At this time Ms. Bialobrzkeski stepped down from the Board.

07-23...The petition of Eric and Paula Warner for the property located at 22 Mill Pond Lane. The applicant is seeking relief from Article 1.3 Expansion of a nonconforming use. Existing structure is non-conforming by no more than 1 foot. Article 4.5.2 Side Setback. The requirement is 10 feet. The proposed is 5 feet. The property is located on Map 150, Lot 17 in the RA Zone.

Eric and Paula Warner, Applicants came forward. Ms. Warner said they have a double lot and are now moving there full-time. They want to renovate a narrow staircase in the middle of the house. There is no basement or garage. They want to move the staircase to the left side of the house and enclose it. A variance is needed because this is non-conforming. Ms. Warner went through the five criteria and said she felt they had been met.

Questions from the Board

Ms. De Vries asked if the hardship was the narrowness of the lot. Mr. McGuirk said the hardship was the roof line.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Ms. De Vries, seconded by Mr. McGuirk, to grant Petition 07-23.

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

Vote: 4 yes, 0 no. Motion passed.

BUSINESS SESSION

Approval of Minutes

Moved by Ms. De Vries, seconded by Ms. Duggan, to approve the Minutes of December 15, 2022.

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

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At this time Ms. Bialobrzkeski stepped up to the Board.

Adjournment

Moved by Ms. Duggan, seconded by Ms. De Vries, to adjourn the meeting at 10:52 p.m.

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

Respectfully submitted,

Joan Rice
Secretary