

**HAMPTON ZONING BOARD OF ADJUSTMENT**  
**MINUTES - Draft**  
**February 18, 2021**  
**Teleconference Meeting**

**Members Present**

Bryan Provencal, Chairman  
Norma Collins  
Anne Bialobrzeski (via teleconference from home)  
Bill O'Brien  
Greg Grady, Alternate

Chairman Provencal called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman Provencal said that this meeting is being conducted electronically pursuant to the Governor's Emergency Order. A teleconference will be utilized for this meeting and the public may join in.

Chairman Provencal introduced the members of the Board.

**PETITION SESSION**

**68-20...**The continued petition of Saviet Living Trust, Mark & Patricia Saviet, Trustees for property located at 42 Kings Highway seeking relief from Article(s) IV Sec. 4.5.2 & 4.5.3 (side and rear yard requirements) to raze the existing two dwellings and construct a new flood compliant single-family home incorporating a garage underneath. This property is located on Map 223, Lot 48 and in the RB Zone.

Monica Kaiser, Attorney representing the applicants, said this neighborhood had many homes that are close to the setbacks. Applicants are reducing some lot coverage and providing parking. Density will be improved and this will be a code/flood compliant building. Attorney Kaiser went through the five criteria and said she felt they had been met.

*Questions from the Board*

Chairman Provencal asked about the proposed rear setback of this building. Attorney Kaiser said currently the property is 2/10 of a foot over the property line. The new building will be 1.3 feet to the drip edge, but 2.2 feet to the house.

Chairman Provencal asked what the hardship would be for 1.3 feet when you need 10 feet. Attorney Kaiser said they are trying to design a co-compliant home. If the house is moved too far forward, necessary parking would be removed.

Chairman Provencal asked about the front setback. Attorney Kaiser said it would be 42 feet.

Mr. Saviet said the issue here is trying to preserve front space and being able to maintain parking.

Ms. Collins said she did not see much improvement in the setbacks in this new plan.

Chairman Provencal said 1.5 feet when you are required to have 10 feet is a lot.

Mr. O'Brien said the petition states that this would be a 5-bedroom home centered on the lot. Mr. O'Brien said he felt it needs to be brought in 10 feet. It will also be necessary to add an 9 x 18 parking space outside. You cannot have stacked parking. A parking spot in the front needs to be shown on the plot plan.

Ms. Bialobrzkeski said there are two one-story homes to be demolished and replaced with a single-family 3-story home. The square footage of living space would increase from 800 s.f. to 1400 s.f. Ms. Bialobrzkeski said she had an issue with the increase in elevation of the proposed structure within the setbacks. Chairman Provencal said the rear setback is the big issue.

Attorney Kaiser said she would recommend withdrawal of the petition. The design team could then meet and address the issues. Ms. Bialobrzkeski said there is the option to make the building smaller. At this time the applicants decided to continue next month.

**Moved** by Ms. Collins, seconded by Mr. O'Brien, to continue Petition 68-20 next month at which time it will be first on the Agenda.

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**06-21**...The petition of Edmund B. Kelty, II, Rosa F. Kelty and John P. Kelty II for property located at 11 Redman Street seeking relief from Article(s) 1.3; 4.5.1; 4.5.2 and 4.5.3 for reconfiguration of an existing one-family into a more livable home. The condominium has been approved and recorded by the Town. The request is to replace the existing one-bedroom 576 sq. ft. camp in LCA 2 with a more livable 2-bedroom home with better parking and setbacks, and in compliance with the sealed surface requirement. This property is on Map 210, Lot 47-2 and in the RB Zone.

Attorney Peter Saari said this project is in violation of setbacks on several sides. This project will replace a below value situation with better value and more in keeping with the neighborhood especially because they will be eliminating a lot with pervious surface. The applicants have received letters from neighbors in support. Keeping both cars in the garage makes for a more attractive building. The main thing to consider is that this will make a house that looks like the houses around it. Attorney Saari went through the five criteria and said he felt they had been met.

*Questions from the Board*

Ms. Bialobrzkeski asked if there were any variances obtained with the reconstruction of the other unit. Mr. Kelty said this was how it was when he purchased the property.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Mr. O'Brien said one of the drawings shows a deck wrapping around the side and shows stairs. He asked if this was on the east side. Mr. Kelty said the stairs could be eliminated. Mr. O'Brien said there is a lot of snow storage area which will be covered up. Mr. Kelty said there is not much of a problem with snow storage. Mr. O'Brien asked if this will go back to the Planning Board. Chairman Provencal said they would have to have a site plan review.

Mr. O'Brien said they are not meeting the setbacks. It shows two feet from the property line on one side, 4-1/2 feet from the rear and Mr. O'Brien said he did not see a measurement for the front.

Mr. Grady said he was having a problem because stairs are shown on one plan and not on the other.

Mr. O'Brien said the two drawings do not match. Ms. Bialobrzkeski said the numbers also do not match.

Chairman Provencal suggested this petition be continued and that the applicants come back with one set of plans that can be reviewed by the Board.

Attorney Saari said the applicants agreed to continue.

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to allow Petition 06-21 to be continued next month at which time it will be second on the Agenda..

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**07-21...**The petition of Green Rock Investments c/o Humberto Andrade for property located at 86 Exeter Road seeking relief from Article(s) 2.3.7(C)(2). The applicant proposes turning this single-family home into a two-family home. This property is located on Map 125, Lot 42 and in the RA Zone.

Attorney James Scully said the applicants were before this Board in December seeking a variance for a 2-family home. The variance was granted. However, Ms. Bialobrzkeski correctly pointed out it was questionable whether or not there was the minimum lot area per dwelling unit as required in this zone. It was determined that there was not and that is why the applicants are again before the Board. They are seeking relief from Article 2.3.7(C)(2). It is important to know that they are not changing anything. The purpose is to not have a significant impact into the Wetlands Conservation District. There is no further impact. All will remain the same. There will be no external changes to the home. Attorney Scully went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Chairman Provencal said he voted against the original petition, but he didn't have a problem with this one.

Mr. O'Brien said this should be contingent upon approval by the Conservation Commission.

Ms. Bialobrzkeski said she thought this was fine. She would support it if all provisions of 2.3.7(C)(2) are met.

#### *Comments from the Audience*

There were no comments from the Audience.

#### *Back to the Board*

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 07-21 contingent upon approval by the Conservation Commission.

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

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**08-21...**The petition of Frank B. & Grace T. McFall for property located at 39 Hobson Avenue seeking relief from Article(s) 1.3; 4.5.1; 2.3.7(C)(4) to replace the home that is

currently on this parcel with a new home elevated on pilings. This property is on Map 290, Lot 33 and in the RB Zone.

Frank McFall, Applicant, said they have owned this home since 2000. Since that time their family has grown and they want to live in Hampton Beach full time. Mr. McFall said they have designed a home that will meet their needs. They will add a dormer to the attic. Neighbors' homes are 2-story. They will have a deck on the first floor. The house will be more compliant because it will be elevated on pilings. It is compliant with the new maps. Attorney Scully went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Ms. Bialobrzkeski asked what the applicants are doing about the RSA that says you can't have new construction within 50 feet of the highest observable tide. Chairman Provencel said the State would have to decide that.

Ms. Bialobrzkeski said she did not see two legal parking spaces. Mr. O'Brien said he would suggest they give up the third floor and have parking underneath. Mr. McFall said they would not want to put parking underneath because of the necessity of climbing stairs. He said they could shift the house to the right. This would decrease the setback from what it is now. It would be a 9 foot setback and allow for parking.

Ms. Bialobrzkeski said she had a problem with the height as proposed. There is not a 3-story near this house. Mr. Grady said he thought it would be a good idea to reduce the size of the house. This would help the parking issue.

#### *Comments from the Audience*

Barbara Kenny, the abutter in back, said she was concerned about the setback in back. Attorney Scully addressed her concerns.

Mary Dray, 43 Hobson Ave., said she is the abutter on the right. She said she did not know why the applicant cannot stay on the same setback as everyone else. The house plan is higher and wider than all other houses. She said she is also concerned about parking.

#### *Back to the Board*

Ms. Bialobrzkeski said one consideration might be getting rid of the dormer on the third floor in front. Then it would look like a 2-story house. Mr. McFall said he would be willing to do that.

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 08-21 with the condition that plans be updated to show removal of the dormer in front, and accommodation of parking on either side of the structure with a 9'2" setback to the foundation on the east side.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had with the exception of Ms. Bialobrzkeski.

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

**09-21**...The petition for Equitable Waiver of Dimensional Requirement of Stephen & Patricia O'Connor for property located at 22 Ocean Blvd. The applicant has constructed a new home and it has been determined after the fact that the rear stairs and a portion of the deck minorly encroach into the rear and side setback. This property is located on Map 296, Lot 81-1 and in the RS/RB Zone.

Henry Boyd, Millennial Engineering, said the rear part of this home slightly encroaches over the rear setback line. This was not shown on the original proposal. It was a measuring error. Attorney Scully went through the five criteria and said he felt they had been met.

*Questions from the Board*

There were no questions from the Board.

**Moved** by Mr. O'Brien, seconded by Ms. Collins to grant Petition 09-21 for Equitable Waiver of Dimensional Requirement and that all conditions have been met.

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**10-21**...The petition of Patrick Sullivan for property located at 1-3 Verne Lane seeking relief from Article(s) 1.3; 4.1.1; 8.2.3; 8.2.4; 8.2.6 to build a garage with a single-family dwelling above in order for him to move his permanent home to Hampton. This property is located on Map 208, Lot 19 and in the RA Zone.

Attorney Scully said the applicant currently lives in North Hampton and wants to move into his property in Hampton. Parking is fine and there will be no increase in impervious surface. Attorney Scully went through the five criteria and said he felt they had been met.

*Questions from the Board*

Ms. Collins asked about the square footage of the proposed building. The representative from Ambient Engineering said it was 1,500 square feet. Ms. Collins asked about the buffer

and what happened to it. Attorney Scully said the buffer was taken down. It is now gone. That part of the lot was overgrown and not maintained.

*Comments from the Audience*

Arnie Germane, 19 Fielding Lane, said the natural boundary was taken down and he believes Mr. Sullivan intends to make this a commercial property.

Mark Thurston, 23 Fielding Lane, said when the trees were taken down damage was done to the fences. Mr. Sullivan was contacted about this, but never responded. The neighbors then had to make repairs themselves. Also, the garage seems peculiar and more conducive to commercial.

John Metrasky, 5 Presidential Circle, said he disagreed that there would be no negative impact to property values. He said he did not believe there were any other structures like this in the neighborhood

\_\_\_\_\_, 7 Presidential Circle, said he opposes this plan. Foliage was there for 25 years and even though it wasn't maintained, it was helpful. Now there are problems with wind, etc. Mr. Sullivan has done nothing to improve how this looks. This looks like a commercial/industrial property. This will diminish property values.

*Back to the Board*

Ms. Bialobrzkeski said she did not see a hardship.

Chairman Provencal said the problem is that the buffer was taken away.

Mr. O'Brien said this is an RA Zone. He said he was against granting any relief from multi-family in the RA neighborhood in the 2020's.

Chairman Provencal said the project does not fit into the neighborhood.

Mr. O'Brien said he was opposed to granting relief. Ms. Collins said she agreed with Mr. O'Brien.

Attorney Scully said they would like to withdraw without prejudice and rethink this project.

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to allow Petition 10-21 to be withdrawn without prejudice.

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**11-21**...The petition of Norman Carpentier, Carpentier Construction for property located at 14 Dover Avenue seeking relief from Article(s) 1.3; 4.5.1; 8.2.1; 8.2.2; 8.2.3; 8.2.4; 8.2.5; 8.2.6 to lift the front structure on this lot and put a garage underneath. There will be no other changes to this lot. This property is located on Map296, Lot 154 and in the RB Zone.

Attorney James Scully said the intent of this project is to improve the situation now exists. The structure is being lifted in order to put a two-car garage underneath. Attorney Scully went through the five criteria and said he felt they had been met.

*Questions from the Board*

Ms. Bialobrzkeski asked if it was okay with DPW regarding the two-car space. Attorney Scully said yes and they would work with DPW where necessary.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 11-21.

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

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**12-21**...The petition of 158 Ashworth Avenue, LLC for property located at 16 L Street seeking relief from Article(s) 1.3; 4.5.2; 4.5.3 to demolish the front structure on this property and would like to continue to make use of the existing rear structure for a proposed restaurant. Nothing will change with regard to the setbacks, but relief is still necessary. This property is located on Map 293, Lot 34 and in the BS Zone.

Attorney James Scully said something like this project hasn't been done in Hampton. It is unique. Mr. Fleury has tried to come up with something very nice for the beach. The front building will be completely gone. Lots of greenery and trees will be brought in. This will keep noise away from abutters.

Henry Boyd, Millennial Engineering, went over the plans. This is a beautiful design concept. The setbacks will still be the same. The ambience will have a Southwestern flair. There will be a courtyard and restaurant.

Attorney Scully went through the five criteria and said he felt they had been met.

*Questions from the Board*

Ms. Bialobrzeki asked about height. Mr. Boyd said they are not doing anything to the roof. A façade will be on the front only.

Ms. Bialobrzeki asked if this building could be brought into compliance without replacing it.

Mr. Boyd said he felt Ms. Bialobrzeki was alluding to the regulation that if the structure is increased in value more than 50% it has to come into full FEMA compliance. Mr. Boyd said they will meet that requirement. It is the applicant's hope to rehabilitate the building, not replace it.

The various walls and fences and their height were discussed.

*Comments from the Audience*

Lori LaCade, 25 A Street, asked if there was fencing between her property and the proposed kitchen. Attorney Scully said they would be happy to make sure fencing is there. Ms. LaCade asked about the capacity of the restaurant. Attorney Scully said capacity would be around 100.

*Back to the Board*

Ms. Bialobrzeki said she supports this project. Ms. Collins said she was thrilled with it and loves the addition of greenery.

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 12-21.

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

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

**13-21**...The petition of Shane Pane for property located at 61 High Street seeking relief from Article(s) 1.3, 4.5.3d to make the outdoor patio space which was temporarily built for the COVID-19 pandemic permanent. This property is located on Map 161, Lot 17 and in the TC-H Zone.

Attorney Scully said Mr. Pine already had a vision for this before COVID hit. What he did was temporary and he now wants it to be permanent. This has created a wonderful outdoor space for the Town. Attorney Scully went through the five criteria and said he felt they had been met.

*Questions from the Board*

Chairman Provencal asked if the camper was on a foundation. If not it would be a concern. Mr. Pine said it was on a foundation.

Mr. O'Brien asked if the camper was already hardwired. Mr. Pine said it was.

Ms. Collins asked about live music. Chairman Provencal said music has nothing to do with this Board. The Board is only concerned with the structures.

Ms. Bialobrzkeski said a nightclub is not a permitted use. Chairman Provencal said this was not a nightclub.

Mr. Grady asked if there was a reason they put it in that particular space. Attorney Scully said it was to create outside space and the ability to socially distance.

Henry Boyd said he and his wife had visited this establishment and thought it had great atmosphere and was wonderful for the Town.

*Comments from the Audience*

Mike Edgar spoke on behalf of the American Legion Post 35. He said the Legion neither supports nor objects to this plan. The Legion intends to build a fence close to the line which borders Mr. Pine's property. Attorney Scully said he knew Mr. Pine would have no objection to this.

Mr. Fleury, 4852 High Street, said he believes this establishment is great for the Town.

*Back to the Board*

**Moved** by Chairnan Provencal, seconded by Mr. Grady to grant Petition 13-21.

Ms. Bialobrzkeski said she would like to amend the motion to say approval is conditioned on the fact that we are not granting relief from 2.8C. Chairman Provencal said they didn't ask for that and he would not entertain this amendment.

Chairman Provencal asked the Board if they felt the five criteria had been met. Chairman Provencal, Mr. O'Brien and Mr. Grady said they had. Ms. Bialobrzkeski said no and Ms. Collins abstained.

**Roll Call Vote:** 3 yes, 1 no (Bialobrzkeski), 1 abstention (Collins). Motion passed.

### **BUSINESS SESSION**

#### **Approval of Minutes**

**Moved** by Ms. Collins, seconded by Mr. O'Brien, to approve the Minutes of January 21, 2021 as amended.

**Roll Call Vote:** 4 yes, 0 no, 1 abstention (Grady). Motion passed.

#### **465 & 467 Ocean Blvd.**

Chairman Provencal said the question here is whether the Applicant needs to come back for the changes they made moving the building from the right to the left.

Mr. O'Brien said they must come back. Last September when they were before the Board there was a problem with plans. What we approved in October was for two properties, 465 & 467. In the letter from Jones & Beach dated January 6, 2021 469 Ocean Blvd. was added. That automatically changes things. One of the abutters has never been notified. Mr. O'Brien said he wanted to know about the height when the building is moved. The plans from Jones & Beach dated January 6, 2021 as the baseline plan is not what the Board approved. There is no surveyor's stamp.

Attorney Scully said the reason the LaBranche property is involved is because he has an easement. The abutters on the southerly side filed an action against the Town. Attorney Scully said they have been in contact with them discussing this new plan.

Mr. O'Brien noted that there are only four days to file this to get it on next month's agenda. He said the applicant should make sure site plans are correct and that there is a correct abutters list. There must be a new elevation plan and a statement in the petition that says applicant will abandon Petition 47-20.

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**Adjournment**

**Moved** by Mr. O'Brien, seconded by Ms. Collins, to adjourn the meeting at 11:11 p.m

**Roll Call Vote:** 5 yes, 0 no. Motion passed unanimously.

Respectfully submitted,

Joan Rice  
Secretary