

HAMPTON PLANNING BOARD

DRAFT MINUTES

June 2, 2021 – 7:00 p.m.

PRESENT: Tracy Emerick, Chair
Fran McMahon, Vice Chair
Anne (Tocky) Bialobrzeski, Clerk
Keith Lessard
Ann Carnaby
Brendan McNamara, Alternate, Acting Clerk
James Waddell, Selectman Member
Jason Bachand, Town Planner
Laurie Olivier, Office Manager/Planning

ABSENT: Alex Loiseau

I. CALL TO ORDER

Mr. Emerick commenced the meeting by introducing the Planning Board members and leading the Pledge of Allegiance. It was noted that Planning Board meetings will now be full, in-person meetings. It was also noted that Tocky and Ms. Carnaby have called in for this meeting, consistent with RSA 91-A:2(III) for elected members of the Board. Tocky and Ms. Carnaby each noted there was no one in the room with them and the reasons for calling in. All votes will be taken by roll call vote.

Brendan McNamara acted as Clerk tonight.

It was noted the applicant for 35 Park Avenue wishes to continue to the July 7, 2021 Planning Board meeting.

MOVED by Mr. McMahon.

SECOND by Mr. Lessard.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

It was noted that the applicant for 61 High Street wishes to continue to the July 7, 2021 Planning Board meeting.

MOVED by Mr. McMahon.

SECOND by Mr. Lessard.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

II. ATTENDING TO BE HEARD

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III. NEW PUBLIC HEARINGS

21-020 16 L Street

Map: 293 Lot: 34

Applicant: 158 Ashworth Avenue, LLC.

Owner of Record: Same

Site Plan: Conversion of residential site into a commercial restaurant. Front home to be demolished with improvements to rear structure to create a mainly outdoor Mexican-themed restaurant.

Waiver Request: Section V.E. Detailed Plans.

Mr. Henry Boyd, Millennium Engineering, and Attorney Tim Phoenix appeared. Keith Lessard recused himself. Kat Racine from Millennium is present as well as Charles Hoyt, the building designer. There are two existing residential structures. Eighty-two (82) percent sealed surface. The current structure is over the property line. They received variances. They are leaving the existing foundation. They are not planning to expand the building. Everything is based on the new flood maps. This is in the flood zone. The structure will have to meet FEMA requirements and Hampton's floodplain management ordinance. The first floor of the structure is above the one-foot freeboard requirement. They will flood vent the existing structure.

The theme is to go with a Southwestern or Mexican style. There will be a garden or gardens - it will offer nice street appeal.

It will have 44 percent sealed surface. They are allowed 75 percent. This will be done with porous pavers. Test pits were done to check for infiltration. There will be a deck and a tequila bar. Mr. Bachand had some concerns about the hours of operation. Al Fleury thinks he wants a 7-day operation that would run from 9:00 a.m. possibly to 1:00 a.m. He may offer a brunch. This will be a seasonal business; three seasons.

There was a concern about noise. Fencing was asked about. A fence won't do anything to mitigate sound per Mr. Boyd. The sound will be higher than the fence. If the Board wants this, it could be replaced.

They want outside music. It is an enforcement issue. This should be a relaxing site.

Mr. Boyd discussed clarifying comments that Jodie Strickland (CMA) and Jennifer Hale (DPW) had. He thinks notes can be added on the plan.

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Charlie Hoyt (designer) discussed the building. Mr. Hoyt noted the 900 square foot building is for tacos and drinks. Most will be in the courtyard. An Alamo wall-like barrier will confine the courtyard. There may be a sugar maple type tree in the eating area. It will be a southwestern motif with stucco.

Ms. Carnaby asked about the fence opening as a gate (to the left side). It was stated 'yes' it opens for service. That is where the driveway part comes in. That will be for picking up trash and delivering supplies to the restaurant. It may be for emergency vehicles also to reach closer to the building.

Mr. McMahon asked about the garden area. People will be there. It will have lush green plants. Hearty banana (survives in this area) is planning to be planted. People can drink there as well.

Mr. McMahon asked for the bar area to be described. There will be no stage for entertainment. There may be a guitar player or two who plays music there.

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Tocky asked how many seats will be there. About 98 per the applicant. She only counted 50 in the drawing. There is also seating at the bar. Tocky said it is not a large area. The idea is wonderful. She is glad to hear there will be no stage. She counted 50 seats outside; she can't imagine that there are 40 seats inside. Ninety-eight (98) is what they can fit through the calcs. It may be more like 60-70 people.

Tocky asked about the wall. The wall is 6' high and on another sheet it says 10' high. Mr. Boyd said if the wall went over 6' it would need a variance. Mr. Boyd said if it were higher than 6', it would be considered a structure and would need a 4' structure setback. They went to a 6' wall.

Tocky said she thought Al (Fleury) volunteered to put a fence along the back. She hopes he sticks to that. Tocky discussed rebuilding the building. If you came to Zoning and then say they are tearing the building down, she doesn't know. Would they meet the 4' setback was asked. Mr. Boyd said the plan is to flood vent the structure. Mr. Boyd does not anticipate needing a new foundation.

Mr. Boyd discussed the fence issue. He spoke with Mr. Fleury about the fence today. Mr. Fleury is not opposed to putting a fence back there. It will help screen the trash area.

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Mr. McNamara asked about seating. Regardless of what is shown on the proposed plan, there must be Fire Department calculations for capacity. He asked if 98 is the Fire Department capacity. Mr. Hoyt stated 'yes'.

In terms of clarifying seating in the garden area, they intended for maybe a bench. There is a planting schedule.

Mr. McMahon asked about trash and recycling. Ms. Racine (Millennium). She showed where four carts can be placed. It is Town served. The DPW agreed with this. They will get the final cart number from the Board of Selectmen.

PUBLIC

Deb Parlee, 27 L Street appeared. She sent an email before the July 15th meeting. She is concerned about another bar. Wally's, The Goat, and Bernie's were discussed. Mr. Fleury does an admiral job with his work rehabilitating properties. Beach life has deteriorated. Bars and entertainment are too much.

Pedestrian traffic was discussed. She spoke to neighbors and another note was sent to the Planning Board. There are 6 alcoholic beverage licenses very close together. Many patrons exist at the late hours of the evening. Behaviors are out of control. There are arrests, intoxication, disorderly conduct, public urination, and drugs to name a few. Another business adds to bad behavior. There is disregard of the noise policy. They have called the police many times. She wishes this was more of a mixed use. They have owned the property for 50 years. She mentioned neighbors who also signed her letter and read comments to the Board.

She discussed 8 months later (Memorial Weekend). Rainy, raw weather. Blue lights out, someone arrested. 4:30 up L Street – three cruisers. Sunday after midnight speakers were still on. She called police. The Goat played music into the morning; she called the police. Someone shot a gun on their street in January.

Mr. Emerick said these are civil matters.

Ms. Parlee thinks it is a postage-size lot. Plantings won't help with noise. Where will the speakers be and how many was asked.

She discussed a drinking wall/rail. Hours are until 1:00 a.m.; that won't happen per Ms. Parlee.

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Lori Lacroix appeared. They own 25 K Street – right behind this property. She listened to the Wally’s expansion meeting. Seven people called in. How can another bar be approved was asked. They invested because it was family-oriented. It is not. She asked about no stage ‘as of yet’. There is not enough police staffing. She does not see another bar being allowed. All the bars are in that area. They may lose renters. Property values are going down.

BOARD

Mr. Bachand discussed his Memo. There were 2 PRC meetings on this application. Most comments were addressed. There are still concerns from CMA and DPW. If the Board approves, these comments should be incorporated by reference. It is the BS Zone. It is still reasonable for the Board to discuss how this project fits into the proposed location. Hours of operation and seasonal use were discussed.

Mr. Bachand discussed privacy fencing. It was initially proposed to be 10’; it’s now 6’. It was reduced due to additional engineering requirements for taller fencing. Mr. Bachand absolutely recommends the fence being continued all the way around the back of the property. The prior attorney for the project (Attorney Scully) stated to the ZBA that he would be happy to include rear fencing. It was stated at the ZBA that capacity was around 100. The actual number of seats should be stated on the recordable plan. There is a 41:14-a process requirement for the fencing. Mr. Bachand discussed amplified noise from the restaurant site to the contained therein (the site) to the extent feasible. The applicant may need to work on sound mitigation. This is in the suggested conditions.

Mr. Bachand noted there is a waiver request of the detailed plan requirement. This is a full plan set – the waiver is not completely applicable as a comprehensive plan set was later submitted at the request of the PRC. The exception is for lighting—with respect to lighting, spillover. Mr. Boyd discussed lumens. **Mr. Boyd will double check this.**

Mr. Bachand said if the Board wishes to approve the application, he recommends it be with the conditions in his Memo dated June 2nd along with voting on the waiver request.

Mr. Bachand reiterated that the waiver should be granted specifically for lighting as shown on the photometric plan.

MOVED by Mr. McNamara to approve the waiver per Mr. Bachand’s explanation.

SECOND by Mr. Waddell.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

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Attorney Timothy Phoenix appeared. He discussed the rear fencing. Yes, they will do it. This is a permitted use in the zone. There is a noise ordinance. Condition Number 11- the noise issue was discussed. Enforcing it as worded may be difficult because it asks that amplified noise be contained therein. The term “to the extent feasible” was asked about. How was asked. “As deemed necessary” was discussed. Attorney Phoenix said amplified noise will comply with the Town’s noise ordinance is how he feels it should be stated in the conditions.

Attorney Phoenix read the ZBA Minutes. People like this project. He wanted to point this out.

Mr. Bachand discussed compliance with the noise ordinance, he believes that is a given and is not what he is saying. If there becomes an issue for the neighbors, the Planning Board has jurisdiction as part of the site plan review to look at mitigation measures within the site. If additional mitigation is needed to help reduce transmission from the site, it is in the purview of the Planning Board to look at it (if it becomes problematic). This is in our Site Plan Regulations. Attorney Phoenix does not know what it will be as of now. He asked what the mechanism is to have it addressed.

Tocky likes the concept. If the approval is left open-ended, it sets up for what it may become.

Ms. Carnaby said she would like it continued until getting specifics about entertainment and seating. She feels it is vague. She supports the Planner’s conditions.

Mr. Boyd does not believe it is vague. Hours are 9:00 a.m. to 1:00 a.m. It will be on the recordable site plan. There is a seating overlay showing seating. Ms. Carnaby sees seating outside the area and it is only 54. Mr. Boyd said this will be a more relaxed atmosphere.

If there are noise issues, it is an enforcement issue. The area is going to be beautiful.

Mr. Hoyt (building design) said the building will help sound from traveling. The wall is 2’ thick.

Mr. Waddell asked what our authority is. If people don’t want that in the area; it is a permitted use. Mr. Emerick said if we don’t approve it, we have to have substantial reasons that would stand up in Superior Court. The ZBA is in place to slow it down; once variances are granted, our hands are tied. Tocky asked about no amplified music. Ms. Carnaby supports that.

Attorney Phoenix said there is nothing in the ordinance that prohibits amplified music. We have to live by the noise ordinance. It is in the BS Zone. There are other avenues that lead to enforcement.

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Ms. Carnaby said that area is over-full. Bars, restaurants and night clubs. There is too much of everything. The problem is the location. We received a grant to re-write the Ordinances.

Mr. Emerick said this is how our zoning is right now. Tocky said we have authority over the hours of operation. Midnight Friday and Saturday; 11 p.m. Monday through Thursday. Mr. McNamara said we are treading on difficult waters if we do this.

Mr. Waddell said we have outdoor hours for entertainment. It happened with Bernie's. It is in the Town Code. This application falls under the current Code.

We have an application in an approved zone with an approved use; variances are in place. We don't have a lot of options. Ms. Carnaby said we need to take the public into consideration. She can't support it the way it is.

MOTION by Mr. Waddell to approve the application with the conditions contained in Mr. Bachand's Memorandum dated June 2, 2021, as written.

SECOND by Mr. McMahan.

ROLL CALL VOTE: 4 - 2 (Tocky and Carnaby) - 1 (Lessard - *recused*)

MOTION PASSED.

21-026 10 Glade Path

Map: 273 Lot: 14

Applicant: Scott and Aysa Crane

Owner of Record: Same

Wetlands Permit: Installation of 103' (linear foot-6' height) vinyl privacy fence.

The applicant did not show up. The Board moved this matter to the end of the meeting.

21-027 35 Park Avenue (continued to July 7, 2021)

Map: 190 Lot: 13

Applicant: Chelsie Portlock

Owner of Record: Chelsie and Daisy Portlock

Wetlands Permit: Add fill to create gentle slope. Install 4' chain link fence around outer edge of backyard.

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21-028 20 Belmont Circle

Map: 108 Lot: 1

Applicant: Heather and Melanie Alcombright

Owner of Record: Same

Driveway Permit Appeal: (2nd Driveway requested; too many curb cuts)

Melanie Alcombright appeared. She wants two driveways that are paved. They built an addition on the right side of the house. They tried to put the new garage where the existing driveway was. There was not enough space. They want to keep their current driveway for their RV. It will be less than 24 feet.

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Mr. Bachand discussed his conditions - a combined curb cut width of no greater than 24 feet and paved aprons. There are no issues with sealed surface. A GIS estimate shows about 20% with both driveways paved. They are in the Aquifer so they are limited to 25% sealed surface. It is a unique situation where the garage addition needed to be opposite the original driveway and connections are already installed. Mr. Emerick noted this is a cul-de-sac without a lot of traffic.

MOVED by Mr. McMahon to grant the appeal with the conditions contained in Mr. Bachand's June 2nd Memo.

SECOND by Mr. Waddell.

ROLL CALL VOTE: 5 – 2 (Lessard and Tocky) – 0 MOTION PASSED.

21-030 321 & 325 Lafayette Rd & 35 Winnacunnet Road

Map: 175 Lots: 10, 13 & 15

Applicant: John Tinios & Katherine Tinios, Trustees

Owners of Record: Same (325 Lafayette & 35 Winnacunnet) and JSJ Hampton Holdings LLC (321 Lafayette) and RBS Citizens Bank (35 Winnacunnet)

Site Plan (Amended): Construct a 760 s.f. deck addition to the existing Galley Hatch building to be used for outdoor dining.

Waiver Request: Section V.E. Detailed Plans.

Mr. Joseph Coronati appeared with Mr. John Tinios. They want a small modification to the Galley Hatch. Outdoor seating was discussed with the COVID era. Modifications were discussed. Parking calculations were discussed. The proposed deck was discussed. The temporary outdoor eating area will be turned back to parking spaces. Architectural plans are provided. Prior improvements were discussed.

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Capacity and parking spaces were discussed. Mr. Tinios revised seating inside the building. They had to reduce seating. We need an indoor seating plan per Mr. Bachand and they are fine with that. It will be a deck over existing pavement.

Mr. McMahon asked about access. Main access is a new door that will be put in on the side of the bar. Through the building. There is an emergency set of stairs. This will be a three-season eating area. There will be heaters. Like they did upstairs.

Tocky asked about abutting properties (comprising the overall development). Are there any changes. No changes to abutting properties. Mr. Tinios has parking easements. No change in parking flow.

PUBLIC

Mr. John Nyhan appeared. He is an abutter at 47 Winnacunnet. He is the President of the Chamber of Commerce. He wrote a letter in support of this project. He noted Mr. Tinios followed re-opening guidelines through 2020 – COVID area. Mr. Tinios kept everything safe. He wants customers to enjoy eating under the sun or moon. He read notes aloud. Any of John's (Tinios) customers can park at the Chamber of Commerce as well.

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Mr. Tinios said a lot of technology is added. Curbside ordering. The deck area was discussed. They're changing and adapting to what the public wants. This is for the comfort of customers.

Mr. Bachand discussed his memo. DPW had a comment about the emergency exit. People can't come out of the emergency exit directly into to the drive aisle. The shed will be removed. That will offer access to the corridor where people can walk out. A performer area was discussed. Speakers will be toward CVS – away from residential area(s).

Tocky said there are residential properties across from Winnacunnet Road. Technically, she is not sure if outdoor music is permitted in that Zone. She is uncomfortable with live entertainment. Mr. Tinios discussed how the deck is designed, there will be a wall. Then there are compressors for air conditioning. Music will be focused to the CVS side.

Tocky said it is a nightclub and it is not permitted in this zone. She did not want to go too deep into this. Outside dining looks fine. She supports that.

It is a restaurant; it is not a night club per Mr. Waddell. Mr. Emerick thinks entertainment is specified as a use. It was clarified this is in the Town Center-South, not the Town Center-Historic. Mr. Bachand does not consider the Galley Hatch a night club.

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Mr. Bachand said his conditions are straightforward. He recommends approval with the conditions in his June 2, 2021 Memorandum. The waiver request was noted.

MOVED by Mr. McMahon on the waiver.

SECOND by Mr. Waddell.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

MOTION by Mr. Waddell to approve the application with the conditions contained in Mr. Bachand's June 2, 2021 Memorandum.

SECOND by Mr. McMahon.

ROLL CALL VOTE: 6 – 0 – 1 (Tocky)

MOTION PASSED.

Mr. Lessard noted that the applicant for Glade Path did not appear. It was **MOVED** to continue this to June 16, 2021

SECOND by Mr. McMahon.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

IV. CONTINUED PUBLIC HEARINGS

21-019 61 High Street (continued from 4/7/21 & 5/5/21) (*continued to July 7, 2021*)

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.

V. CONSIDERATION OF MINUTES of May 19, 2021

MOVED by Mr. McMahon to accept and approve the May 19, 2021 Minutes.

SECOND by Ms. Carnaby.

ROLL CALL VOTE: 4 – 0 – 3 (Waddell, Lessard & McNamara) MOTION PASSED.

VI. CORRESPONDENCE

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VII. OTHER BUSINESS

- **2, 6 & 7 Scott Road & Scott Rd. – Request for a one-year extension of the Site Plan conditional approval granted by the Planning Board on July 15, 2020.**

Mr. Bachand discussed the proposal for a warehouse building. The application was approved July 15th of last year. Conditions have not been addressed yet, but at no fault of the applicant. It was appealed by the abutter. Mr. Bachand recommends a one-year extension.

MOTION by Mr. Waddell.

SECOND by Mr. McMahon.

ROLL CALL VOTE: 4 - 0 - 3 (Lessard, Tocky, & McNamara) MOTION PASSED.

Tocky said a notice should be placed on the (meeting room) door regarding CDC guidelines. Selectmen control the building. It's a decision of the Selectmen. Tocky said the CDC guidelines say unvaccinated people should wear masks. Mr. Waddell asked Tocky to be in touch with Mr. Sullivan. Mr. Sullivan said it is up to the (each) Board. We don't think it is a problem.

Mr. Lessard said if that is in the recommendations of the CDC, then the public should know if they are not vaccinated that they should wear a mask. Ms. Carnaby said to add specifics to what the CDC guidelines say per Tocky. It's a moving target; it changes often. We don't know who is being honest.

VIII. ADJOURNMENT

MOTION by Mr. McNamara to adjourn.

SECOND by Mr. McMahon.

ROLL CALL VOTE: 7 – 0 – 0

MOTION PASSED.

MEETING ADJOURNED: 8:48 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