

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES - Draft
June 16, 2022

Members Present

Bill O'Brien, Chairman
Anne Bialobrzkeski
Erica De Vries
Nichole Duggan
Tom McGuirk
Bryan Provencal, 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

Chairman O'Brien said Applicants for Petition 17-22 have asked to withdraw.

Moved by Ms. Bialobrzkeski, seconded by Ms. Duggan, to allow Petition 17-22, 27 Highland Avenue, to be withdrawn without prejudice.

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

Chairman O'Brien said Applicants for Petition 29-22 have asked to continue next month.

Moved by Ms. Bialobrzkeski, seconded by Ms. De Vries, to allow Petition 29-22, 123 Little River Road, to be continued next month.

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

21-22...The petition of Benchmark, LLC for property located at 17 Seaview Avenue seeking relief from Article(s) 2.3.7 C4 and 4.9 and Article IV Dimensional Requirement to allow portions of existing single-family home to be razed (existing garage will remain) and a new single-family home to be constructed (the proposed home is to be rebuilt in roughly the same location as the existing dwelling). The existing home sat 6.5 feet to 7 feet off the side lot line and about 25 feet off the ROW. The existing garage is about 8.5 feet off the other

side lot line. Portions of the rear of the existing structure including decks and steps, encroach into the 12 ft. building setback to a wetland buffer at the rear of the lot. There are also some encroachments of the existing structure into the 50 ft. wetland setback area. This proposal is to construct a new home about 7 feet off the southwest side lot line, the existing garage will remain at 8.5 feet off the other side lot line and the new structure will have a porch on the street side of the home which will be 24 feet off the ROW. A small area, at the rear of the proposed home, along with a screen room, deck and steps are proposed to be located within the 12 ft building setback to the 50 ft. Wetlands Buffer area. This request also includes relief to allow: a) an existing shed which currently sits at the lot line and within the 50 ft. Wetland Buffer to remain (other sheds shown on the plot plan were razed earlier this year, the owner is not proposing to rebuild these structures): b) to allow a well house to remain, (the well house is within a wetland on this property): c) to allow the existing "yard" area to remain within the 50 ft. Wetland Buffer area. This property is located on Map 133, Lot 80 and I the RB/BS Zones.

Joseph Maynor representing the Applicants came forward. He said the Applicants want to construct a new home in the same location as the previous one. One of the three sheds will remain. Impervious surface will go from 18.9 % to 18.7%, A deck will be constructed. The Applicants want to maintain use of the yard area which is within the Wetland Buffer. There will be ample parking. Mr. Maynor went through the five criteria and said he felt they had been met.

Questions from the Board

Chairman O'Brien asked if they had a building permit. Mr. Maynor replied that they did and had many discussions with the Building Inspector.

Ms. De Vries asked for the name of the Building Inspector they dealt with. Robert Rand, Contractor, said it was Dennis who is the Assistant Building Inspector. He did three inspections and then all of a sudden there was a cease and desist order and a suggestion to go to the Conservation Commission. Ms. De Vries asked if the home owner was aware of the wetlands situation. Mr. Rand said no one was aware.

Ms. Bialobrzkeski said the back of the property is in a flood zone and that is why the Applicants were asked for a flood elevation certificate. She said it was her understanding that the 10 foot side setback will be needed. The survey stamp was done digitally. There is something wrong here. Ms. Bialobrzkeski said she believed an Equitable Waiver should have been requested. Mr. Rand said they were originally told they would need an Equitable Waiver and then told they did not need it and instead should go for a variance.

Chairman O'Brien said there were three different plans for stairs. 1) No stairs on the deck, 2) Stairs on the deck all the way to the end, and 3) On the plot plan it shows stairs just in the buffer.

Chairman O'Brien asked why a shed is needed in the 50 foot buffer. The home owner said he didn't care one way or the other.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Ms. De Vries said she was bothered by how much is in the 62 foot setback. They were given a Building Permit even if it had a mistake in it. She said she felt the Board could send it through the variance process in this case. She said she was not sure they got correct service from the Town. Since this is not a significant incursion and this is a small lot they don't have much space. Ms. De Vries said she did not think this was overbuilding and seems reasonable given the facts of this case. Mr. McGuirk said he agreed with Ms. De Vries.

Ms. Bialobrzkeski said she still felt an Equitable Waiver was the way to go. As for the deck and porch, you can have a deck but not a porch. She said she did not see the hardship and she did not feel the Board should rule on this request. They should go to the Conservation Commission.

Brianna O'Brien, Conservation Commission, said they had not discussed this request. However she did agree with Ms. Bialobrzkeski about the porch. Also by using up the 12 foot structure setback they are using up what potentially could be their only yard space.

Moved by Mr. McGuirk, seconded by Ms. De Vries, to grant to Applicants for Petition 21-22 variances for 2.3.7 C4, 4.9, and 4.5.2.

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

Vote: 4-1 (Bialobrzkeski). Motion passed.

23-22...The petition of Andrea R. Checovich, Trustee, Andrea R. Checovich Revocable Trust for property located at 1062 Ocean Boulevard seeking relief from Article(s) Article 1, Section 1.3, Article II, Section 2.3.7c(4), Article III, Section 3.3 and Article IV, Section 4.9 to replace existing seasonal ocean front cottage (1,317 sq. ft.) while curing sideline setback non-conformities and reducing sealed surface, all consistent with surrounding properties. This property is located on Map 98, Lot 34 and in the RA Zone.

At this time Ms. Bialobrzkeski stepped down from the Board and Mr. Provencal stepped up to the Board.

Sam and Andrea Checovich, Attorney Robert Casassa, Casassa & Ryan, and Henry Boyd, Millenium Engineering came forward. Mr. Checovich said they have owned this property for 12 years and want to have a more conforming property and a place to enjoy their children and grandchildren.

Mr. Boyd discussed existing and proposed. The existing was built decades ago. We now have a new mapping system that would impact this property. A little more than half of the property is in the VE18 zone which means the house would need to be built on piles. For the proposed it will be built at elevation 19. There are no wetlands on the property. Neither of the houses are in setbacks. The new structures will comply with all setbacks and meet FEMA and Town flood plain requirements. There will be a 4.4 % reduction in sealed surface.

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

Questions from the Board

Ms. De Vries asked about 3.3. Chairman O'Brien asked if the Board had ever approved 3.3. Mr. Provencal said that they had.

Ms. De Vries asked about the size of the lot. Mr. Boyd said it was approximately ¼ of an acre.

Back to the Board

Mr. McGuirk said these houses could just be left as they are but it is better to have the improved buildings.

Ms. De Vries said two abutters have expressed their approval of this project. She said she believes a hardship exists. This is an improvement of the property, the neighbors like it and she would have a hard time saying no.

Moved by Mr. Provencal, seconded by Mr. McGuirk, to grant Petition 23-22.

Chairman O'Brien asked Brianna O'Brien, Conservation Coordinator, if this would require Conservation Commission approval. She said it would not.

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

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

At this time Ms. Bialobrzkeski stepped back to the Board, Mr. McGuirk stepped down and Mr. Provencal took his place.

25-22...The petition of Kim & Laura Peschier for property located at 12 JoAnne Lane seeking relief from Article(s) 1.3 Expansion of non-conforming use to add 2nd story addition to existing footprint 24.5' x 38' of a 3-bedroom, 1 bath single family dwelling. Proposing to add a 24.5' x 19' 2nd story addition to add an additional bedroom and bath. This property is located on Map 282, Lot 196 and in the RB Zone.

Laura and Kim Peschier, Applicants, and Richard Grimes, Contractor, came forward. Mr. Grimes said the existing building is non-conforming.

Chairman O'Brien said relief will have to be requested for the setback in the rear. This is not the way the application is written,,

Ms. De Vries said the Board can't make a decision on this because it wasn't noticed correctly.

Ms. Bialobrzkeski said they need to know what the existing setbacks are.

Mr. Grimes said he would like to come back next month with the proper application.

Moved by Ms. Bialobrzkeski, seconded by Ms. De Vries to allow Petition 25-22 to be withdrawn without prejudice. Application fee will be waived if Applicants resubmit within the next few cycles.

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

At this time Mr. McGuirk stepped back to the Board and Mr. Provencal stepped down from the Board.

26-22...The petition of Sweet Nectar, LLC/Michael Kettenbach for property located at 28 Nor'East Lane seeking relief from Article(s) 1.3 Expansion of Nonconforming Use, 4.5.1 Front Setback, 4.5.3 Rear Setback, 4.9 Structure Setback, see also 2.3.7.C(4), 2.3.1G.1 Wetland Buffer, 3-A.5 (c) Attached ADUs to raze the existing home, garage and virtually all other improvements in favor of a new 5-bedroom home on the easterly area. Replace the 20'x24.4' garage further from front lot line containing a Detached Accessory Dwelling Unit (DADU) above. This property is located on Map 99, Lot 4 and in the RA Zone.

Attorney Monica Kaiser, and Kelly Kettenbach, Applicant, came forward. Attorney Kaiser went over items that are new or corrected. Attorney Kaiser said the deck will be removed and there will be a pervious patio.

Questions from the Board

Ms. De Vries asked if the plans had changed from last time. Attorney Kaiser said they had not.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Kettenbach said both of his neighbors support this project.

Ms. Bialobrzkeski asked the Applicant if this Board did not give them a variance for an ADU for the garage would they still want the rest of the relief. Ms. Bialobrzkeski said she was fine with the house.

Mr. McGuirk said there was a hardship because this piece of land is different. If this was a typical lot we would say put the ADU next to the house. In this case this is the only place for the ADU.

Ms. Bialobrzkeski said she did not agree about the hardship because of the deed restriction and also it does not meet the spirit of the ordinance. Ms. De Vries said she still felt there is a hardship that is specific to the properties on this street.

Mr. McGuirk said everyone in New Hampshire has the right to an ADU.

Moved by Ms. De Vries, seconded by Mr. McGuirk, to grant Petition 26-22.

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.

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

27-22...The petition of Edward Miville for property located at 67 Mooring Drive seeking relief from Article(s) 1.3 Expansion, 4.5.2 Side Setback, 4.9, See also 2.3.7.C4 Dwelling Setback from Wetlands Buffer, 2.3.2.G.1 & 2.3.4.B.2 Structural Setback from Wetlands Buffer, 2.3.4.B.3 Prohibited Uses, 2.3.4.D and 2.4.9.A.1 Structure Requirements to raise

home for flood compliance, add deck, and replace impervious driveway with pervious driveway. This property is located on Map 289, Lot40 and in the RB Zone.

Attorney Monica Kaiser and Edward Milville, Applicant, came forward.

Chairman O'Brien asked if the Conservation Commission had reviewed this application. Brianna O'Brien, Conservation Coordinator, said they had and were happy with it.

Chairman O'Brien asked if the table had been corrected. Attorney Kaiser said it was. Attorney Kaiser said they are raising the structure to comply with FEMA. They are now asking for setback relief. This does not need pilings. This would be burdensome. What is being proposed is safe from flooding.

Questions from the Board

Ms. Bialobrzkeski said she did not think the Board can give relief to the one foot of freeboard. If the garage is separated from living space it does not have to be at the one foot of freeboard. Ms. Bialobrzkeski said she would like to exclude that from whatever relief is granted.

Cory Caldwell said in his opinion they do not need the relief. The lowest floor is at elevation 10. Relief is not needed from 2.4.9.A.1.

Ms. Bialobrzkeski said she did not see how this property is so different from others and she does not see how relief can be granted to everybody on Mooring Drive.

Mr. McGuirk said saying people need to build to the standards of the Velocity Zone when they are not in it is wrong.

Mr. Caldwell said this is a prime example of why there are variances. Applying that VE standard affects about 350 properties. Applying this is extremely strict and is intended for beach properties, not properties on tidal rivers or marshes.

Chairman O'Brien said he was concerned about flood insurance.

Ms. O'Brien said it is the opinion of the Town Planner that if rules set by the Town are stricter than FEMA the rules of the Town are to be followed. Ms. O'Brien said the Conservation Commission did not review this piece of it.

Mr. McGuirk said the properties on Mooring Drive are not all the same.

Ms. De Vries asked what the benefit was to the Town requiring the VE standard. Mr. McGuirk said the people of the Town voted for it. However, many voters do not read the explanation and just vote.

Ms. De Vries said the voters voted the members of the Board in to decide some of these things.

Mr. McGuirk said if someone has to rebuild because of flooding it can result in their not even being able to pay their taxes.

Ms. De Vries said if a rule makes such a hardship that it is impossible to meet it, it is the Board's job to help the owner. Ms. De Vries said these should be taken on a case by case basis. Then no precedent would be set. She said she thinks there is a special hardship associated with this property.

Ms. Bialobrzkeski said the hardship has to be inherent in the land. However, this has been relaxed somewhat.

Ms. De Vries said if this is a responsible effort to build a nice home in the area, she believes they have met the standard.

Chairman O'Brien referred to the application where it says "existing structure within 4 foot setback. Raise structure in setback. This variance may not be needed". Chairman O'Brien said they would need a variance,

Moved by Ms. De Vries, seconded by Ms. Duggan, to grant Petition 27-22, but no approval for 2.4.9.A1.

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 and Chairman O'Brien.

Vote: 3 yes, 2 no (Bialobrzkeski, O'Brien). Motion passed.

28-22...The petition of Mary T. Mulligan Living Trust for property located at 64 Mooring Drive seeking relief from Article(s) 1.3 Expansion, 2.3.4.B.3 Prohibited Uses, 2.3.4.B.2 Structural Setback from Wetlands Buffer, 2.3.7.C.4 Structural Setback from Wetlands Buffer, 2.3.4., 4.5.1 Front Setback and 4.5.2 Side Setback to raise home, add deck, replace and extend front stairs, remove asphalt drive and replace with pervious pavers. This property is located on Map 289, Lot 33 and in the RB Zone.

Attorney Monica Kaiser said items had been corrected as requested. 2.3.4.B.3 was added. Attorney Kaiser went through the five criteria and said she felt they had been met.

Questions from the Board

Ms. Bialobrzkeski said she wanted everybody to be aware that a deck elevation of 3 feet is not pervious. The standard is 6 feet.

Chairman O'Brien asked if this project was approved by the Conservation Commission. Ms. O'Brien said that it was.

Ms. Bialobrzkeski said she didn't believe 2.3.7.C.4 was needed and if it was 2.4.9.A.1 would be needed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Ms. Duggan, seconded by Mr. McGuirk to grant Petition 28-22 with the exception of 2.3.7.C4.

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 and Chairman O'Brien.

Vote: 3 yes, 2 no (Bialobrzkeski, O'Brien). Motion passed.

BUSINESS SESSION

Approval of Minutes

Moved by Ms. Duggan, seconded by Ms. De Vries, to approve the Minutes of April 21, 2022 as amended.

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

The May 19, 2022 Minutes will be addressed next month.

Adjournment

There being no further business, the meeting was adjourned at 9:58 p.m.

Respectfully submitted,

Joan Rice
Secretary