

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES - Draft
August 19, 2021

Members Present

Bill O'Brien, Chairman
Anne Bialobrzewski
Erica De Vries (by telephone)
Brian Provencal
Bill O'Brien
Greg Grady, Alternate

Also Present

Jim Marchese, Building Inspector

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

The Pledge of Allegiance was said.

Chairman O'Brien asked Ms. De Vries why she wished to attend by telephone. She replied that it was because of health concerns.

Moved by Chairman O'Brien, seconded by Mr. Provencal, to allow Ms. De Vries to attend the meeting via telephone in accordance with RSA 91-A:2, III.

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

PETITION SESSION

32-21...The continued petition of Scott Logan for property located at 816 Lafayette Road seeking relief from Article(s) 4.8b to add a 12' x 26' deck on front right side of building for outdoor seating. This property is located on Map 90, Lot 26 and in the B Zone.

Scott Logan, Applicant came forward. Mr. Logan said he wanted to expand his deck on the side of his building to provide more outdoor seating. Mr. Logan went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. De Vries said she did not see any impervious calculations. Mr. Logan said he has worked with the Building Inspector on that. Mr. Logan explained the projects that will be

done. Mr. Provencal said the Applicant is not asking for relief on impervious surface. He would be doing a fair trade and would not be increasing the impervious surface on the lot.

Comments from the Audience

Jay Diener, Conservation Commission, said he was concerned the net effect would be that Mr. Logan is going to exceed the coverage he has now on the lot. He asked if another variance is needed. Chairman O'Brien said Mr. Logan is making an even trade. Mr. Provencal said it would be a moot point to ask for this relief. Mr. Diener said his concern is that when any encroachment happens it becomes incremental.

Mr. Diener then introduced the new Conservation Coordinator Brianna O'Brien.

John Magrow said he owns two condo buildings next to this property. He said he was concerned about traffic, parking, deliveries, etc. Mr. Provencal said this was a Planning Board issue. Mr. Magrow then discussed the use of his private way and said this will increase the problem.

Back to the Board

Moved by Mr. Provencal, seconded by Ms. De Vries to grant Petition 32-21 with the stipulation that there be no addition to impervious surface percentage. There will be jersey barriers to protect the private road. The drive through area to the other street will be blocked off by some kind of barrier.

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

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

34-21... The continued petition of Mary & Tom Murphy for property located at 13 Tuck Road seeking relief from Article(s) 4.8a for construction of a 6' wide by 32' long farmer's porch, open on 3 sides, with a porch floor of PVC decking. This property is located on Map 109, Lot 29 and in the RA Zone.

At this time Ms. Bialobrzkeski recused herself and Greg Grady stepped up to the Board.

Mary and Tom Murphy, Applicants, came forward. Ms. Murphy said this project would increase their property value and also the appearance of the neighborhood. Ms. Murphy went through the five criteria and said she felt they had been met.

Questions from the Board

Chairman O'Brien said the Applicants' project is at 40% impervious and that number will not change with this project. Mr. Murphy said if necessary they would make their entire driveway pervious. Chairman O'Brien said that would be good and would satisfy a lot of people.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. Marchese told the Applicants that it would be necessary to get a driveway permit from DPW who will decide what they need to maintain the road system.

Moved by Mr. Grady, seconded by Ms. De Vries, to grant Petition 34-21 with the stipulation that the Applicants put pervious pavers in the driveway.

Mr. Provencal said he could not vote for this. It is excessive and the Applicant would be forced to rip out the whole driveway just to get a farmers porch. They are not going to increase the pervious surface and the driveway will be very expensive.

At this time Mr. Grady withdrew his motion and Ms. De Vries withdrew her second.

Amendment made by Mr. Grady, seconded by Mr. Provencal, to grant Petition 34-21.

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

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

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

40-21...The continued petition of Carter Plimpton for property located at 16 Mace Road seeking relief from Article(s) 4.8a to build a deck on the side of the house to gain access to pool. This property is located on Map 128, Lot 40 and in the RA Zone.

Mr. Marchese said the owner has decided to remove the impervious driveway and the lot coverage after deck is added will be at 21%. Therefore, there is no need for a variance.

Moved by Mr. Provencal, seconded by Mr. McGuirk, to allow Petition 41-21 to be withdrawn without prejudice.

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

41-21...The continued petition of John & Victoria Wjjeysinghe for property located at 37 Naves Road seeking relief from Article(s) 4.8a (maximum impervious coverage 25%) to construct a 16 x 24 deck on back side of house. This property is located on Map 147, Lot 16 and in the RA Zone and Aquifer Protection District.

Mr. Marchese said the Applicants are going to change their application and are going to create an impervious driveway and the project will be 24% with the deck addition.

Moved by Mr. Provencal, seconded by Ms. De Vries, to allow Petition 41-21 to be withdrawn without prejudice.

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

43-21...The continued petition of Craig S & Amanda L Field for property located at 37 Ann's Lane seeking relief from Article(s) IV Table II Section 4.2 and Section 4.2 footnote 22 and 4.3 to subdivide the property into 2 lots which requires certain variance relief relative to frontage and lot width/shape. This property is located on Map 127, Lot 20 and in the RA Zone.

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

Attorney Derek Dervin said this petition had been before the Board and then withdrawn. The plan now incorporates all changes that they believe were requested. The plan now addresses drainage, impervious surface, etc.

The variance asked for is only for the rear lot. In order to create the rear lot which is a pork chop lot there is a need for a road frontage variance and some dimension relief. They are now down to 21% impervious surface. Attorney Dervin went through the five criteria and said he felt they had been met.

Mike Siever, Engineer, discussed the plan. He talked about fire access and drainage.

Comments from the Audience

Pat McCahey, 19 Ann's Terrace, said he does not want another driveway on Ann's Lane. He said drainage problems affect health, safety and welfare.

Sue Blaine, 10 Ann's Terrace, said she was concerned about groundwater problems and water going into her house. She said she does not feel there is a hardship. The Applicants purchased the home knowing it was unbuildable.

Peter _____, 11-1/2 Homestead Circle, said his concern is about building in the Aquifer. This will create stress for neighbors. The tree line will have to come down and this causes more water problems.

Craig Whittaker, 7 Philbrook Terrace, spoke against the project.

Janice Fulmer, 45 Ann's Lane, said she was concerned about water problems. She said she is also concerned about the natural buffer. She said she was also worried about traffic and noise.

Back to the Board

Attorney Dervin said they were not asking for a variance for impervious surface. They are requesting a variance for a lot division. This does not relate to drainage.

Ms. Bialobrzkeski said there are two dwelling units on the front lot. In the Aquifer Zone the lot size requirement and the lot area per dwelling unit is one-third over and above the area requirement in the underlying zone. This does not have enough area to support three dwelling units.

Ms. De Vries said approval by the Fire Dept. does not guarantee health and safety. The Fire Dept. cannot be the unilateral decider. She also said she does not believe there is any economic loss involved and it doesn't meet the road frontage requirement. Ms. De Vries said she did not see a hardship and the proposed use is unreasonable.

Mr. Grady said his issue was the driveway and he also didn't see a hardship.

Chairman O'Brien said he did feel drainage was an issue and he would like to see a drainage study done by someone before he makes a decision.

Attorney Derkin said they would be willing to provide a drainage study and to make sure everything is conforming.

Ms. Bialobrzkeski said she did not see Aquarian on the Abutters List. Chairman O'Brien said in that case it would be necessary for the Applicants to reapply.

Moved by Ms. De Vries, seconded by Ms. Bialobrzkeski, to deny Petition 43-21.

Chairman O'Brien asked for a vote on this motion. Chairman O'Brien, Mr. Grady and Mr. Provencal said they would be abstaining.

Ms. De Vries withdrew her motion.

Chairman O'Brien asked Attorney Derkin if they would like to withdraw. He said they would.

Moved by Ms. Bialobrzkeski, seconded by Mr. Provencal, to allow Petition 43-21 to be withdrawn without prejudice.

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

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

38-21...The continued petition of Matthew D & Debra A Sullivan for property located at 3 Ancient Highway seeking relief from Article(s) 4.5.2 for stairs and 8' x 10' landing. This property is located on Map 152, Lot 3 and in the RA Zone.

Matthew and Debra Sullivan, Applicants, came forward. Mr. Sullivan said their existing stairway and landing are ugly and unsafe. This project will be functional, safe and beautiful. Mr. Sullivan went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski mentioned that the dimensions shown on the plan are shown in tenths of a foot. Instead of 5.4 feet it should be 5 feet, four inches.

Ms. De Vries asked if the requested survey had been done. Mr. Sullivan said it was included in the package.

Comments from the Audience

There were no comments from the Audience

Back to the Board

Moved by Mr. Provencal, seconded by Ms. Bialobrzkeski, to grant Petition 38-21 to allow a 4.4' setback on the deck.

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

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

44-21...The petition of Michael Gallahue for property located at 25 Harris Avenue seeking relief from Article(s) 1.3 and 4.5.2 to raise roof line to 32 feet with partial flat roof with two full dormers on either side. This property is located on Map 295, Lot 54 and in the RB Zone.

Michael Gallahue, Applicant, said he wanted to raise the roof on this property to get more square footage. There would be no increase in the footprint. Mr. Gallahue went through the five criteria and said he felt they had been met.

Questions from the Board

There was much discussion about the setbacks and the overhangs.

Ms. Bialobrzkeski asked the Applicant that he must be aware that if his improvements are 50% of the value of the structure it could cause a problem since he is in the flood zone.

Comments from the Audience

Fred _____, 13 Boston Ave., expressed concern about the height of the building.

Back to the Board

Ms. Bialobrzkeski said the Board doesn't know what the distance of the overhangs will be because it doesn't show on the plan.

Mr. Provencal said the Applicant would have to refile and come back. Chairman O'Brien told the Applicant that he would have to be more specific.

Moved by Mr. Provencal, seconded by Mr. McGuirk, to allow Petition 44-21 to be withdrawn without prejudice. The Applicant must refile.

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

45-21...The petition of Michael S & Constance B Lynch Revocable Trust of 1990 for property located at 7 Concord Avenue, Unit B (16 River Avenue) seeking relief from Article(s) 1.3, 4.5.1, 4.5.2, 4.5.2, 4.1 to demolish seasonal dwelling Unit B and build 3-story year-round single-family dwelling unit on same footprint. Foundation with crawl space and flood vents. Increase front porch depth to 7' and reclaim interior space by using the side and back porches. This property is located on Map 296, Lot 92B and in the RB Zone.

Constance Lynch, Applicant, and Henry Boyd, Millennial Engineering, came forward. Mr. Boyd went over the plan. He said there is a slight increase in impervious, but this is not in the Aquafer Zone.

Ms. Lynch said the units will be safer including flood zoning requirements. This will improve the value of surrounding properties. These units will not be used as rentals and no parking spaces will be available for lease or rental. Ms. Lynch went through the five criteria and said she felt they had been met.

Questions from the Board

Ms. Bialobrzkeski asked if it was correct that the project invades the setback further on the west side. Mr. Boyd said that was correct. Mr. McGuirk asked if this was a condo. Mr. Boyd said yes. Mr. McGuirk asked if they would be submitting an amended site plan. Mr. Boyd said they will.

Chairman O'Brien pointed out measurements, etc. that were not correct. He also pointed out that they would not be staying in the same footprint.

Ms. De Vries mentioned a deed restriction. She said what is being requested is a violation of that deed restriction. Mr. Provencal said the Applicants would have to go to the Board of Selectmen on the issue of the deed restriction. This Board does not speak to deed restrictions. Ms. De Vries said she was not comfortable granting something that is a violation of a deed restriction.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. McGuirk said he felt a great job was done with the design.

Moved by Mr. Provencal, seconded by Mr. McGuirk, to grant Petition 45-21.

Chairman O'Brien asked the Board if they felt the five criteria had been met. Mr. Provencal, Mr. McGuirk and Chairman O'Brien said that they had. Ms. Bialobrzkeski and Ms. De Vries said they had not.

Vote: 3 yes, 2 no (Bialobrzkeski, De Vries). Motion passed.

46-21...The petition of Michael J & Francine J Carroll for property located at 12 Concord Avenue seeking relief from Article(s) 6.3.1; 4.5.1. The Applicant currently has two residential dwelling units on the premises and is seeking to demolish the existing front unit and build a new home. The rear dwelling unit will remain unchanged. This property is located on Map 296, Lot 115 and in the RB Zone.

Attorney Eugene Gary and Henry Boyd, Millennial Engineering, came forward. Attorney Gary went through the five criteria and said he felt they had been met.

Mr. Boyd went over the plan. He said they would be improving the front setback. There will be two parking spaces for each unit which are required. They have moved the structure substantially back which will create one more parking space. There will be a 16.5% reduction in sealed surface.

Questions from the Board

Ms. De Vries asked if this is a resident only parking. Chairman O'Brien said that it was.

Mr. Provencal said if they have stacked parking, and if so does it block only their own unit. Mr. Boyd said that was correct.

Ms. Bialobrzkeski said she would rather see the parking stay the way it is currently.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Provencal, seconded by Mr. McGuirk, to grant Petition 46-21 with the stipulation that the Applicant must show parking for four cars stacked, not blocked by the other unit.

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

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

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

47-21...The petition of Al Fleury for property located at 10 Riverview Terrace seeking relief from Article(s) 3.25B Restaurants, which are otherwise not permitted in the RB Zone to place a dumpster enclosure in the RB Zone at the edge of the existing parking lot which

serves as parking for the restaurant known as Wally's Pub. The placement of this dumpster is currently prohibited as no commercial use should extend into the residential zone. The dumpster is viewed by the Town Planner as a commercial use. This property is located on Map 293, Lot 71 and in the RB Zone.

48-21...The petition of Al Fleury for properties located at 144 Ashworth Avenue and 6 Riverview Terrace seeking relief from Article(s) 4.5.2, 4.5.3k which defines a required 4' side and rear setback from the property line for an expansion proposed for Map 293, Lots 66 & 4173. This includes the addition of a dining pavilion which will allow open air dining behind the existing restaurant known as Wally's Pub. The new design proposes an accessory walkway, which will also serve as an accessible route, along the southerly face of the building. This walkway is proposed to be pervious pavers with a slope, and railings guarding the leading edge to prevent a hazard from falling. Additionally, a set of stairs has been placed at the rear of the lot. These stairs are not directly connected to the building, nor is the aforementioned walkway. These properties are located on Map 293, Lots 66 & 73 and in the BS Zone.

Al Fleury, Applicant, and Henry Boyd, Millennial Engineering came forward.

Mr. Provencal said that Ms. Bialobrzkeski should recuse herself from the Board for these petitions because she would not be unbiased since she addressed these petitions while sitting on the Planning Board. Mr. Provencal said he would not be a part of this meeting and stepped down from the Board.

Mr. Fleury said they did not wish to continue without a full Board and want to continue next month.

Moved by Chairman O'Brien, seconded by Ms. Bialobrzkeski, to allow Petitions 47-21 and 48-21 to be continued next month at which time they will be first on the Agenda.

Vote: 4 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk and Mr. Grady stepped up to the Board. Mr. Grady was replacing Mr. Provencal.

49-21...The petition of Gregg Lemerise / Bernard Lemerise for property located at 558 Exeter Road seeking relief from Article(s) 3-A.5(a) & 3-A.5(c), 3-A.5 site location and size 5-C to allow a detached A.D.U. This unit will be within an existing garage. Garage to have 24' x 28' addition built on to it. There will be one bedroom on second floor. This property is located on Map 35, Lot 6 and in the RAA Zone.

Gregg Lemerise and Henry Boyd came forward. Mr. Lemerise went through the five criteria and said he felt they had met.

Mr. Boyd said this is a very large parcel. It is oddly shaped. There is 4.4% sealed surface.

Questions from the Board

Ms. Bialobrzkeski asked if all was okay with soils, etc. Mr. Boyd said some more tests are necessary. A septic design needs to be done.

Ms. Bialobrzkeski said the addition does not qualify because they built the garage last year. Mr. Lemerise said he did not plan to do an ADU when he built the garage.

Mr. Grady asked about the square footage of the proposal. Mr. Lemerise said 1,488 sq. ft.

Chairman O'Brien said he would rather see two dwelling units instead of an ADU.

Ms. De Vries asked the Applicant if he would be interested in downsizing this unit. Mr. Lemerise said he would if needed.

Ms. Bialobrzkeski said she was not comfortable with this.

More discussion followed about whether this project could be allowed.

Ms. Bialobrzkeski said relief can be given only for 3-A.5(c).

Moved by Chairman O'Brien, seconded by Ms. Bialobreski, to deny 3-A.5(a) and 3-A.5 and to grant 3-A.5(c). This will subject to septic approval.

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

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

BUSINESS SESSION

Discussion of relief granted for Petition 21-21, 15 Battcock Avenue

Chairman O'Brien said the Applicant was going to move the building up. Now he has decided to demolish the whole building and build a new building similar to the first.

It was agreed by the members of the Board that the Applicant should come back with a new application.

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Adjournment

There being no further business to come before the Board, the meeting was adjourned at 11:45 p.m.

Respectfully submitted,

Joan Rice
Secretary