

HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES - Draft
September 16, 2021

Members Present

Bill O'Brien, Chairman
Anne Bialobrzkeski
Erica De Vries
Tom McGuirk
Brian Provencal
Ed St. Pierre, 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 introduced the Board.

PETITION SESSION

Chairman O'Brien announced that Petition 54-21, 17 L Street, had been withdrawn.

Moved by Mr. Provencal, seconded by Ms. De Vries, to allow Petition 54-21, 17 L Street, to be withdrawn.

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

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.

Attorney Tom Phoenix said Mr. Fleury wants to expand the premises by putting an outdoor pavilion and picnic tables there. He wishes to place a dumpster on one of the residential lots. This dumpster would be surrounded by a large fence. This dumpster will take the

place of the many trash bins now in use. Attorney Phoenix went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. De Vries asked where the trash bins are stored currently. Katherina Morrill, Millennial Engineering, said they are at the back side of the building. They are moved out front every other day for pick up.

Mr. St. Pierre asked why they can't find a place for the dumpster in the BS Zone. Attorney Phoenix replied that the new improvements take up all the room. Mr. St. Pierre said he was against moving the dumpster to that location.

Comments from the Audience

Susan Gonchar said her property abuts the fence. She said she strongly opposes this petition. She asked why the dumpster couldn't be in the same location as the trash bins are in now.

Jennifer Coleman, 9 Riverview Terrace, said she had problems with noise and the odor that would arise from the dumpster.

Melissa Olemick also raised concerns about noise and odor.

Marlene Sewall, 22 Riverview Terrace, expressed concerns about noise and bugs, etc.

Deb Parlee, 27 L Street, expressed concerns about noise.

Back to the Board

Mr. Fleury said he would listen to recommendations.

Mr. St. Pierre said this is proposed to move the dumpster into the RB Zone. He said he would prefer to have it in the BS Zone. Mr. Fleury said he picked this spot because it was easier for the trash pickup. Mr. St. Pierre said he would encourage Mr. Fleury to investigate a place in the BS Zone.

Ms. De Vries said she would not want to place this dumpster in a residential zone.

Ms. Bialobrzkeski said she did not believe a hardship has been proven.

Chairman O'Brien said he was opposed to going outside the BS Zone. The trash could be right next to the building.

Mr. Fleury said he felt they should pull this application and find a better site for the dumpster.

Attorney Phoenix said they would like to withdraw.

Moved by Mr. St. Pierre, seconded by Mr. Provencal, to allow Petition 47-21 to be withdrawn without prejudice.

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

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.

Attorney Tom Phoenix and Mr. Al Fleury came forward. Attorney Phoenix said they want to replace an existing tent and create a pavilion which can be open or closed. They also want to put an extension on an existing building. Impervious surface will go from 95.6% to 76.8%. Attorney Phoenix said he actually did not think these variances were necessary. Setbacks that are not connected to the building are not against the setback restriction. Attorney Phoenix went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. Provencal noted that the Zoning Board does not give relief for landscaping.

Mr. St. Pierre asked who decided that the walkways violate the setbacks. Jim Marchese, Building Inspector, said he believed it was the Planning Board.

Ms. Bialobrzkeski discussed the wall. She said she believed the neighbor is relying on that staying the same. He will not have the physical access around his buildings that he has now.

Mr. Hoyt, Millennial Engineering, said the walkway will be wheelchair accessible. It is a permanent walkway but is not attached to the building.

Comments from the Audience

Deb Parlee, 27 L Street, said she didn't know why everything has to be built to the absolute edge.

Back to the Board

Ms. Bialobrzkeski said they are proposing pervious pavement so they can get around the setback requirements. She said she felt the Zoning Board was here for the purpose of appeal. The Code Officer must make the decision.

Mr. Provencal said the Building Inspector should say whether it is landscaping. Mr. St. Pierre said he felt it was landscaping.

Mr. Marchese said the Town Attorney and Town Planner consider it a structure, so he is not ready to make a decision.

Ms. De Vries said she would suggest that this is not ready for a decision by the Zoning Board.

Attorney Phoenix said they are asking for everything that is four feet to be approved.

Moved by Mr. Provencal, seconded by Mr. St. Pierre, to grant Petition 48-21 with the following stipulations: 1. Relief for the landing 6.8' x 11', 2. Building Inspector to get confirmation about life safety requirements. 3. Applicant must meet pervious and impervious requirements.

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

Vote: 3 yes, 1 no (Bialobrzkeski), 1 abstention (De Vries). Motion passed.

50-21...The petition of Oceanfront Gaming Inc. for property located at 81 Ocean Boulevard seeking relief from Article(s) 3.4.5 to dedicate a part of the first floor of the existing building for games of chance with refreshments available for the patrons. This property is located on Map 293, Lot 22-11&2 and is in the BS Zone.

Attorney Peter Saari and Applicant Tony Fusco came forward. Attorney Saari said this is charitable gaming. Everyone who comes here seems to like it. This is for downstairs. Two

years ago they came to the ZBA for upstairs. The governing rules for this type of operation are that it not be visible from the street and fully enclosed. This will generate many more charities. There is no landscaping involved, no off street loading or parking. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre asked if they were still doing gaming on the second floor. Mr. Fusco said they were. Mr. St. Pierre asked if this was an expansion. Mr. Fusco said it was. Mr. St. Pierre asked about the amount of money going to charities. Mr. Fusco said that last year \$600,000 went to local charities. They now deal with 35 charities. This special exception will give more charities the opportunity to take advantage of this.

Chairman O'Brien said when he made the motion last time it was to be for local charities and abutting towns. Mr. Fusco said it will remain the same. Chairman O'Brien asked if new charities are added will it reduce the amount the existing charities get. Mr. Fusco said it would not. New charities will get less. Mr. O'Brien asked how much the State gets, how much the charities get and what happens to the rest. Mr. Fusco said the State gets 10%, the charities get 35% and the remainder goes for overhead costs.

Ms. De Vries asked if they have said no to any charities. Mr. Fusco said they have not.

Ms. Bialobrzkeski asked about machine noise. Mr. Fusco said there is volume control.

Comments from the Audience

Chris Nevins said he represents American Legion Post 35. He said they have been members for almost 4 years. Mr. Nevins said they have been very fortunate in the nine months of this year having received nearly \$50,000.

Deb Parlee, 27 L Street, said the gaming opportunity is great. It is not too loud, it is reasonable and everyone enjoys it.

Back to the Board

Moved by Mr. Provencal, seconded by Ms. Bialobrzkeski, to grant Petition 50-21 (Special Exemption).

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

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

51-21...The petition of Richard & Lois Carroll for property located at 16 Fairchild Drive seeking relief from Article(s) 4.5.2 (side), 4.8A and 1.3 to build a 12 X 20 one-car garage over existing driveway. This property is located on Map 108, Lot 29 and in the RA Zone (Aquifer Protection District).

At this time Mr. St. Pierre stepped down from the Board and Mr. Tom McGuirk stepped up to the Board.

Ms. Carroll said they were requesting a variance so they can build a 12 X 20 garage. Ms. Carroll went through the five criteria and said she felt they had been met.

Questions from the Board

Ms. De Vries asked if they could move the garage over out of the setback. Ms. Carroll said the house would be less secure.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Chairman O'Brien suggested giving the Applicants 3' to the drip edge.

Ms. Bialobrzkeski said she did not see a hardship.

Chairman O'Brien said if the garage is moved impervious surface will be increased.

Ms. De Vries said she was concerned about encroaching on the neighbors. The hardship is being pushed on them instead of moving the garage closer to the house.

Mr. McGuirk said a garage can be constructed that doesn't have a door into the house. There are other ways to do this without a variance.

Moved by Mr. McGuirk, seconded by Mr. Provencal, to grant Petition 51-21 with the stipulation that it be 7.6' off the house to the drip edge with a 12.6' garage including a 3" drip edge off each side. No closer than 4' to the property line.

More discussion followed. Mr. Provencal withdrew his second to the motion and Mr. McGuirk withdrew the motion.

Moved by Mr. McGuirk, seconded by Mr. Provencal, to grant Petition 51-21 with the garage no closer than 4 feet to the property line.

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 yes, 1 no (Bialobrzkeski). Motion passed.

52-21...The petition of Stephen & Patricia Reichle for property located at 15 Battcock Avenue seeking relief from Article(s) 4.5.1 (front setback) and 4.5.2 (side setback). The existing single story structure, and its foundation will be demolished and a new foundation installed. A new two-story structure will be constructed on the new foundation. The new foundation will be larger than the demolished foundation as it will have an 8.1' x 4.8' section added to footprint of the demolished foundation on the northwest corner, and the screened porch at the rear of the house will extend 1.0' towards the back property line. This property is located on Map 281, Lot 58 and in the RB Zone.

Stephen & Patricia Reichle, Applicants, came forward. Mr. Reichle said they want to create more living space. The increase in building footprint will be minimal. Mr. Reichle went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Bialobrzkeski asked about the location of parking. Mr. Reichle said parking was on the south side between the street and the porch.

Ms. Bialobrzkeski reminded the applicants that this does not address the new flood information. Mr. Reichle said Millennial Engineering is addressing that. Ms. Bialobrzkeski said she would like the house moved back at least to 10 feet in front. Mrs. Reichle said in that case the retaining wall would be compromised. Mr. McGuirk noted that the applicants want to use their backyard. Mrs. Reichle said that would also take away the patio. Mr. McGuirk said the retaining wall is the hardship.

Ms. De Vries asked if 4.5.2 does not apply here. Ms. Bialobrzkeski said that was correct. Ms. De Vries said she felt this was consistent with other homes in the community.

Moved by Mr. Provencal, seconded by Ms. De Vries, to grant Petition 52-21 with the requested variances as needed.

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.

53-21...The petition of Bradley L & Pamela Warren for property located at 787 Ocean Boulevard seeking relief from Article(s) 4.5.1 (front setback) and 4.5.2 (side setback) to remake the existing second floor deck by extending it 4.0 feet to off-set the usable space that will be lost from having to replace storm induced leaking inward-swinging doors with new more water-tight outward swinging doors. This property is located on Map 211, Lot 7/1 and in the RA Zone.

Attorney Peter Saari and Bradley Warren, Applicant, came forward. Attorney Saari said the applicants are trying to make better use of their property. This project will also address the flooding problem. Mr. Warren explained that the French doors they now have swing inward letting water in. The new doors will swing outward alleviating the problem. By installing these doors they will lose 3 feet of usable space. The extension of the deck will be 4 feet. Mr. Warren said all abutters have approved this project. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. Provencal asked why they couldn't put a slider in. Mr. Warren said they want to keep the doors that they have. Mr. McGuirk said sliders are not the best either.

Ms. De Vries said her concern was that this would create a precedent for others to build further out. Mr. McGuirk said if someone comes in they must have the exact same set of circumstances.

Comments from the Audience

Lisa Feole, 781 Ocean Blvd., said she approves of what the Applicants are trying to do. It is only 4 feet and they are not blocking anyone's views.

Back to the Board

Moved by Mr. McGuirk, seconded by Mr. Provencal, to grant Petition 53-21.

Ms. De Vries said she was having a hard time seeing a hardship.

At this time Mr. Provencal withdrew his second and Mr. McGuirk withdrew his motion.

Discussion followed and several of the Board members agreed that it would be okay if the deck was 4 feet in the center and tapered to 3 feet at the side.

Moved by Mr. McGuirk, seconded by Mr. Provencal, to grant Petition 53-21 with the condition that the deck be 4 feet in the center tapering to 3 feet on the side.

Chairman O'Brien asked the Board if they felt the 5 criteria had been met. Chairman O'Brien, Mr. Provencal and Mr. McGuirk agreed that they had and Ms. Bialobrzkeski and Ms. De Vries said they had not.

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

BUSINESS SESSION

Approval of Minutes

July and August Minutes will be addressed at the next meeting.

Adjournment

There being no further business to come before the Board, the meeting was adjourned at 11:12 p.m.

Respectfully submitted,

Joan Rice
Secretary