

HAMILTON PLANNING BOARD
MINUTES OF MEETING
April 19, 2016

Members Present: Peter Clark, Ed Howard, Rick Mitchell, Brian Stein, Matt Tobyne, and Claudia Woods

Associate Members Present: Richard Boroff

Planning Director: Patrick Reffett

Others Present: Kathryn Morin, Bill Dery, Ann Gero, Jen Scuteri, and Dave Carey

This meeting was called to order at 7:00 p.m. by Planning Board Clerk Brian Stein.

Approval Not Required for 21 Harris Avenue

Kathryn Morin, attorney for the applicant, stated that the ANR was not a simple process but there was no division of land. The original plan was dated to 1880, but the parcel was not conveyed according to the lot lines on that plan. The rear lot line cut across multiple parcels on the 1880 plan and had always been conveyed that way. The proposed plan showed four land areas designated as parcels G and L which abut 21 Harris Avenue. Ms Morin said the abutters had easement rights across the paper street and that they owned to the middle of the roadway. Mr. Cole owned one parcel but had easement rights to another parcel. Ms Morin said there was a derelict fee statute that allowed abutters to own to the middle of those old roadways and the law had evolved from statutory rights to rights that allowed access to the nearest public way but not access for every lot to every roadway within the subdivision.

The title was beyond the scope of what the Board should look at but, according to Attorney Morin, she wanted to give the Board the information so they would understand what had happened. According to Chapter 81X, the lot met the requirement of property lines shown on the plan as they showed the existing ownership, lines of the streets which were those of public or private ways already established, and no new lines of a division of land or no new ownership of parcels were indicated. The applicant felt it was necessary to have an ANR plan on file as the current plan was not what was shown at the Registry of Deeds or the Town assessor map.

According to Ms. Morin, endorsement of an ANR would not mean it met zoning. By adding parcel G and L to 21 Harris, it would bring the lot closer to being in compliance with zoning. The applicant wanted a number of notes on the plan as was allowed under 81P.

Attorney Morin noted that the Dracut case in which it was determined that the Planning Board must define its decision if a plan was a subdivision, and if not a subdivision, the Planning Board must endorse the plan. This was a consideration only if the plan was for two or more lots and if there was sufficient frontage. Case law, according to Ms Morin, indicated that this approval was merely a mechanical or administrative act. Ms Morin said there was an existing home with no new lines of ownership and no new lots.

Patrick Reffett said he received an e-mail from Town Counsel which had four reasons that the Planning Board should not sign the proposed ANR. Reasons for the denial included the fact that the proposal would affect property owners not included in the process, the plan was not signed or stamped, inadequate frontage, and the change would affect abutters along the way as it did not match the plan of 1880. The subdivision was modified at some time, so this ANR was a subdivision from the current surveyed plan of 1880. Patrick Reffett said the Board should listen to Town Counsel despite the fact that greater frontage and land square footage to create a parcel that was closer to zoning requirements was a benefit.

Rick Mitchell clarified that the application would be a modification of a subdivision. Patrick Reffett added that it was a modification of a lot within a subdivision. Brian Stein asked if that would apply to any lot line change.

Peter Clark asked why the applicant didn't get the abutters to sign as co-applicants so they could be involved in the process. Patrick Reffett said Town meeting approved the release of the roadway but abutters did not pursue the acquisition of the roadway. Attorney Morin said the current proposal would get the plan to a point that would allow lots to be conveyed. Ms. Morin said if the Board thought it was appropriate to have abutters as co applicants, they would wait for the next meeting, but didn't want to wait if the Board intended on following Town Counsel's opinion anyway. Matt Tobyne said he thought the Board should hear from the abutters, but Brian Stein said the neighbors would not lose anything until they agreed to the release but thought it was cleaner to have them on the application.

Ed Howard made motion that Town Counsel's recommendation be followed and the Board deny the ANR application.

Brian Stein requested more time to talk about the subdivision piece.

Attorney Morin requested to defer action until the next meeting. Ms Morin would obtain the signatures of the abutters or have the plan redrawn to not include the abutter lots. An amended application would be most appropriate.

Changes to the Zoning Bylaw

Peter Clark said sections 1.2 to 1.7 were not in the existing By-Law but Rick Mitchell thought it was just cleaning up rather than changing anything within the By-Law. Bill Dery said he was getting the 200 signatures required for changing Site Plan Review from the ZBA to the Planning Board and if there were substantive changes proposed within the proposed By-Law changes, the Board could add them to the change he was proposing for special town meeting.

Claudia Woods said she thought Section 1.4.1 was a significant change. Rick Mitchell said it was about retroactive existing applications. Ann Gero said all the language was new but a number of times Mark Bobrowski said they were standard changes, but were in fact in the existing By-Laws . Two sections 1.1. A. and B described limitations on building on land subject to periodic flooding and crossing wetlands. Lands in Conservancy Districts were the only place that these provisions were carried forward which Ms Gero said was a substantive change. Ms Gero said the clause about the Conservancy District was in the existing By-law, but did not appear in the new By-Law. The Board agreed it needed to be kept.

District definitions and boundaries were discussed. Boundaries information was moved to split districts.

Ann Gero said the document needed to include detached and single family homes. Definitions were left into the By-Law after clustered housing was deleted. Patrick Reffett referred to expanding the housing stock and having the ability to describe new housing language would be preferable.

Boarding houses were permitted as of right in a residential district but Mark Bobrowski thought it was inappropriate to have it be as of right so he took it out and put it in as an accessory use with only three boarders. Mr. Bobrowski included bed and breakfast with a whole section as well as assisted living facility but the Board agreed it was a substantive change. According to Ann Gero keeping the boarding house would remove the substantive change.

Claudia Woods noted that the ZBA needed to approve Site Plan Review uses according to the Use Table and wanted to know if the yes notation should be listed as ZBA. Ann Gero said it was just a use table, not a place to denote who had authority over Site Plan Review.

Section 10.6.2. was being reviewed by Jeff Melick who was absent.

Claudia Woods wanted to flag manufacturing as Ann Gero said all criteria was in section 10.5.2., but Patrick Reffett added that currently there were no manufacturing sites. Rick Mitchell thought neighborhood and environmental impacts covered a wider coverage than the current discussion of items such as explosions that may occur in manufacturing sites.

Ann Gero discussed garage use for more than four automobiles in the residential district. Patrick Reffett said the Building Inspector would consider garages of more than four units a commercial use. Ann Gero asked if a car collector had the garages built would it be a commercial use. Brian Stein thought it was an accessory use.

Claudia Woods wanted to flag a few things that were changes such as electrical charger or social day care. Ms Woods thought it was best not to do anything substantive. Peter Clark and Ed Howard said it should be taken out.

8.4, 8.5 were two ways to allow accessory apartments. The Board agreed to flag the section to make sure it was consistent with the use table. Brian Stein thought it was fine.

Board Business

Peter Clark asked if the Planning Board was actively aware of the “no further subdivision of land” notation on Longmeadow Way. Rick Mitchell said the proposed project was not subdividing the land and Brian Stein said the applicant was combining the two lots into one.

Ed Howard said there was a CPC meeting where town groups would advise the CPC committee about what they might approve as desirable versus undesirably for the future of the town. A year ago, a meeting was not well attended but the Board really liked the idea, so another meeting on

May 24th, would be held at the public library. The general public was invited to express their desires as to where they wanted to spend CPC money.

Minutes to be approved at the next meeting.

Rick Mitchell made a motion to adjourn.

Claudia Woods seconded.

Vote: Unanimous in favor to adjourn at 9:45 pm.

Prepared by:

Attest

Date

Marcie Ricker