

HAMILTON PLANNING BOARD
MINUTES OF MEETING
September 5, 2017

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, Bill Olson, Brian Stein (Chair), and Claudia Woods

Associate Members: Janel Curry, Chris Shepard

Others Present: Patrick Reffett,

The meeting was called to order by Brian Stein at 7:04 pm. in the Memorial Room.

Public Hearing – Sale of Recreational Marijuana Ban.

Bill Olson opened the public hearing by reading the legal notice regarding all three By-law changes. Russ Stevens offered the history of marijuana in the State. Hamilton voted no to the legalization at a recent election. 91 cities and towns voted no while 260 voted yes. According to Chief Stevens, towns had a right to allow the sale of the product in their town (Bill H818). If a town voted yes to legalization, the question would be a ballot question. If a town voted no to legalization, the question would be answered at Town Meeting. The By-law, which allowed for retail sale establishments as well as commercial growing, would be presented for Fall Town Meeting. Brian Stein said if the By-law passed, the use would be inserted into the Use Table within a specific district. A marijuana establishment would also be defined.

Motion made by Rick Mitchell to close the public hearing.

Bill Olson seconded.

Vote: Unanimous in favor.

Motion made by Bill Olson to approve the By-law for Town Meeting.

Rick Mitchell seconded.

Vote: Unanimous in favor.

Public Hearing – Estate Overlay District.

Claudia Woods recalled that she had met with the landowners in June and the edited version resulting from that meeting was distributed. Patrick Reffett responded that the Board went through the documents and had incorporated recommendations that were different from the draft at a public meeting. Ms. Woods said the changes were significant after listening to the landowners who didn't want commercial uses and wondered why the commercial uses were reinserted. Brian Stein said commercial uses were already in the By-law. Ms. Woods recalled that the draft had added the impact to abutters, which was also missing.

Rick Mitchell had prepared a chart comparing what was original and proposed, which was on the Planning Board website page. The By-law would apply to 19 properties. Mr. Mitchell said the genesis of the By-law was to give owners an opportunity to develop residential or commercial uses rather than subdividing the property and losing the character of the house and open space. The current By-law passed by a 2/3's majority at Town Meeting. Mr. Mitchell said the Special Permit would be totally discretionary and the Board could ask the applicant to provide technical analysis funding to review the application. Mr. Mitchell continued that the approval process would be rigorous. Mr. Mitchell said he had received a letter about changing the By-law without voter approval. Mr. Mitchell recalled that the existing By-law went through public hearings and had Town Meeting approval.

The new By-law would encourage residential housing rather than commercial use and reduced the allowable expansion for new construction. The current By-law allowed new floor area of commercial construction to be three times the floor area of the existing building if the original building were renovated to Historic Standards. Under the proposed By-law, new building area would be twice the floor area if the original building were renovated to Historic Standards. If the original building were not renovated to Historic Standards, new construction would be limited to one time the floor area. According to Rick Mitchell, the change reduced the impact of the existing By-law.

Susanna Collerado (Winthrop St.) said the concept started from big house landowners who found it difficult to figure out the future of their houses but did not want their land touched because they already had conservation restrictions on the land. The landowners wanted the opportunity to have apartments or condos on the properties. Ms. Collerado said commercial use was not in their vocabulary. At Town Meeting, landowners could not support the current By-law because of commercial expansion of the main house (Part B).

Dave Thompson (Essex St.) said that while there were 19 properties, there were 14 abutters to the Essex St. property alone. Mr. Thompson said residents wanted to participate in the process and wanted to know what was being discussed. The only change from the comments provided was that new floor area had been reduced from three times to two times. As an abutter, Mr. Thompson was concerned with commercial uses, which he felt was an affront to those living in residential zoned areas. In response to Mr. Thompson's concern that the estate house would be torn down, Rick Mitchell said the entire intent of the By-law was to protect the house from being demolished.

Jack Lawrence (Rock Maple) offered his concern that smaller units within the house would cost the Town money. Mr. Lawrence said the By-law along with the Cottage Housing By-law would produce small housing in town and there was no plan to determine what the effect or consequences would be. Mr. Lawrence said the Board should show citizens the impact of the By-law before Town Meeting. Rick Mitchell responded that a landowner could subdivide his

property or allow a 40B without an impact study and that this By-law was giving a landowner another option.

Page Fleming (Essex St.) said she was shocked and disappointed at the secretive decision the Board made at its last meeting. Ms. Fleming said the decision did not reflect the wishes of the citizens the Board was charged with representing but rather the personal agendas of some members of this Board. While Ms. Fleming thought the Board had voted for a new Chairman in Claudia Woods' absence, it was determined that was not true. When asked to rescind the erroneous comment, Ms. Fleming refused to do so. Ms. Fleming said Peter Clark should recuse himself from discussion regarding the Estate Overlay District as he was an estate owner who had a potential financial gain from the discussions. Mr. Clark responded that he had given away the development rights to Essex County Greenbelt, except for the two acre parcel where his home was located. Ms. Fleming apologized for her comment. Ms. Fleming noted that Brian Stein and Rick Mitchell were both on the Hamilton Development Corporation, which was charged with developing growth in Hamilton. Mr. Stein responded that the Hamilton Development Corporation was only responsible for the downtown commercial district. Ms. Fleming apologized.

Page Fleming suggested the Board showed a disregard to listening to residents and accused them of shadowy maneuvering. Ms. Fleming wanted to understand why Claudia Woods was unaware of the changes, but it was determined that she had missed one meeting when the topic was on the agenda and discussed. Rick Mitchell said the Board was being respectful of the voters of the entire town. The original By-law was approved in 2010 and that changes were discussed and transparent. Ms. Fleming accused the Board of "first grade shenanigans." Richard Boroff responded that Open Meeting Law had to be followed.

Claudia Woods asked to have impact to abutters reinserted as item 6 of Section 9.4.13 Special Permit Application, to which no one had an issue as it was an unintentional omission. Ed Howard thought communication seemed to be a problem in the process and suggested holding larger meetings at the old library, however there was no video capability.

Rick Mitchell made motion to continue the hearing until the next meeting on September 19, 2017.

Richard Boroff seconded.

Discussion ensued regarding the potential properties being indicated on a map. Brian Stein noted that candidate properties under the Overlay District had to meet criteria. Kent Fleming (Essex St.) said he had just purchased the house and since the property was not on a map, he was unaware that the property could be developed. Rick Mitchell responded that properties were subject to the Senior Housing By-law, 40B, or a subdivision and that development could happen to properties that homeowners abutted. Philip Sears (Moulton St.) compared the current and

proposed By-laws and asked about the Historic Rehabilitation terminology. Mr. Stein responded that it was always in the By-law.

Vote: Unanimous to continue

Site Plan Review 775 Bay Road – Synthetic Turf Field.

CPA money would be used for the design and test pits to determine an accurate price (\$2.6M - \$3.9M) and whether or not certain items would be completed. Proposed items were prioritized, but the applicant wanted to permit as much as possible. The approval proposal was needed to roll out fund raising of the public/private partnership. There would be debt exclusions for the Schools to take on debt.

Motion made by Rick Mitchell to close the public hearing for Site Plan Review for the Hamilton Wenham Regional School Site Plan Phase I.

Richard Boroff seconded.

Patrick Reffett noted that 300' noticing around the property had been completed. Peter Clark added that no one responded or was concerned. Bill Olson said there were not too many conditions.

Vote: Unanimous in favor.

Public Hearing – Definitive Subdivision Plan 550-560 Bay Road.

Tom Ford said he was proposing two existing lots, one of which had an existing house, into three lots. There would be two new 40,000 sf lots in the Historic District with a 16' paved common driveway with a 3' shoulder. The Definitive Plan was exactly the same as the Preliminary Plan. Mr. Ford said he had perc-tested both new lots and had received permission for the State highway curb cut.

Project Engineer, Rick Salvo said the current 2.4 acre lot had frontage on Bay Road. The proposal would create a right of way 40' wide with 400' of frontage for both proposed lots. The 16' road would be pitched to one side and would provide for an emergency turn around. There was a 2.2% cross slope with infiltration via a stone trench. Best Management Practice infiltration was considered better than structural solutions. Water would not be sent to Route 1A. The waiver list was for the driveway. There would not be any extraordinary cuts or fills. Waivers were from a 30 mph design speed roadway as there was only a 16' roadway. Side yard setbacks were greater than required. The house would face the proposed roadway as garage doors should not be seen in the Historic District.

Doug and Carolyn Trees had sent a letter of support. The Police and Fire Chiefs approved the location and design. Douglas and Veronica Kiernan were in support. Mr. Salvo said he had aligned the roadway directly across from the Bridge St intersection which was safer than within 150' or 250' of the intersection. There was a 300' site distance to the south. The intersection would have a stone wall with no signage and lighting would be in front of each house. Patrick Reffett added that the applicant was not pursuing Town acceptance of the driveway but rather a

private driveway easement with snowplowing and sanding being the homeowners' responsibility.

Motion made by Ed Howard to approve the plan as presented.

Richard Boroff seconded.

Vote: Unanimous in favor.

Public Hearing – Willow Street Overlay District.

Patrick Reffett updated the Board as to the history of the proposal, which would make for a more strategic review, giving the Board better threshold areas where they could make determinations as to what the applicant was doing and what the Board wanted. The district included four properties from Asbury St. to the Gourdeau property. Richard Boroff described the changes he made in the ordering and formatting of the By-law. Some items would be in the general regulations. The Table of Contents for WSOD was also revised.

Town Counsel had submitted some issues with Section 9.5.7.4, which Patrick Reffett had added after a previous meeting. The issues included the .75 to 1 ratio. Discussion ensued regarding if the ratio would be applicable to more than one building and the Board agreed that it would apply to all structures. Donna Brewer had made a change to clarify.

Design Guidelines were discussed and Brian Stein noted that he would prefer to have a design per the Guidelines rather than it being a requirement. The Board agreed to change the term "shall" to "should be." The Guidelines referenced were on the website but the Board added, "as available at Town Hall." The Board agreed to make pre-application purely conceptual, including site plans, floor plans, and building elevations on all sides for pre-application. Utilities, demo, and drainage would be removed. It was determined that there was a need to separate pre-application and submittal application. An applicant would refer to Rules and Regulations for a formal submission and 10.9 for pre-application requirements.

Town Counsel had commented on exterior features as viewed from off site and was being inclusive of all elements rather than just roof top elements. Section 4.2.1 described what was allowed so the same language would be kept. It was agreed that there was no obligation to approve a waiver for height so there was no need to call out one particular waiver.

Section 9.5.10 was discussed and Peter Clark questioned the term, "protection" of the neighborhood and suggested "in harmony" to replace the term. Everyone agreed.

Rosemary Kennedy emphasized the point that the Willow Street Overlay District was airdropped into a residential area but Brian Stein responded that it was in the Commercial District that was adjacent to the Residential District. Ms. Kennedy said there were so many private residences in the area, the impact of development on abutters should be considered.

Motion made by Rick Mitchell to continue the public on WSOD until September 19, 2017.
Peter Clark seconded.
Vote: Unanimous in favor.

Site Plan Review – 650 Asbury Street – Gravel Parking Lot

Patrick Reffett reviewed the proposal recalling that hearings had been held with site visits and the preparation of at least two different designs that were reviewed on a number of occasions. During the All Boards Meeting last May, the practicality and location were discussed. The Boards discussed the ability to locate a parking lot in a reasonable and practical way that would support the use of the property hereafter.

Tim Olson said he wanted to bring the facility into the next use and recalled that a Request for Qualification was out for a designer to help with the function and maintenance of the property as well as a landscaping plan. The parking lot needed to be plowable in the winter. The DPW would tackle the parking lot construction with a contractor. The proposed location would cost less to construct. The gravel parking lot would access the house through the rose trellis then up a few steps through the garden. Mr. Olson was also asking the Planning Board to approve a 30' section of stone wall to be removed to access the parking lot. The proposed parking area was in a flat open field and would not be located in the septic area.

Lighting was not in the proposed plan, but Tim Olson said he could consider temporary lighting or incorporate lighting and landscaping as part of the RFQ, but was not part of this application. Bill Olson wanted the stone walls that were removed to stay on site and could become part of the flare of the entrance. Tim Olson said the other driveway construction incorporated the stones into the flare and that it would be done at this entrance as well.

Peter Clark and Tim Olson discussed the orientation of the parking area with the idea to keep it out of view from Asbury St. passer-byers. The lot would create 48 spaces in a 60' x 200' field.

Ed Howard said stone walls were sacred in Hamilton and that Asbury Street was a Scenic Byway. Mr. Howard thought the removal of stone walls required a public hearing. Mr. Howard said there would be a lecture at the public library in October regarding stone walls. Tim Olson said the price for the parking lot was \$9,800 with the Town assisting with trucks and trucking. The \$9,800 did not include the Town's contribution. The real price was close to \$13,000. Only one dead tree would be removed.

Motion made by Rick Mitchell to approve the Site Plan as proposed contingent upon determination of the requirement or a public hearing for a stone wall alteration.
Seconded by Richard Boroff.
Vote: Unanimous in favor.

Bill Olson stated that if Donna Brewer indicated there was no need for a public hearing for the stone wall, Mr. Olson was ready to begin work

Board Signatures for a Prior Decision at Pingree Field

Patrick Reffett distributed the revised conditions. Bill Olson renumbered them and added 6,7,8, and 9. Conditions included having a 6' tall wood fence along the parking lot, web based lighting control for LED, limited public address system so no more than 60 decibels would be experienced at property line, and "no parking" signs to be posted along Highland St. Claudia Woods suggested inviting Tom Catalano for tree placement discussions. Patrick Reffett offered that the Board could approve the Decision Conditions, he would prepare the text and Board members could come into the office to sign the document.

Tim Olson made motion to approve the Conditions and Findings of the 577 Highland St. Site Plan Approval with conditions and revisions discussed at the meeting

Ed Howard seconded

Vote: Unanimous in favor among voting members. Brian Stein was not present at the previous meeting and did not vote.

Board Signature for Prior Decision 577 Bay Road. Communication Tower.

Brain Stein said Patrick Reffett had spoken with Donna Brewer about the wording of the Findings and Decision. There was not a supermajority approval. A minority had written a descent letter, which Ms. Brewer thought should be included. It was a 3:3 vote to include the descent letter, so a majority was not reached. The Board did not vote to accept the document as the opinion of the overall Board.

Rick Mitchell suggested a specific Finding that the majority of the Board thought the criteria was met, but not the supermajority needed.

Peter Clark said he was concerned about the evaluation of the application. What was crafted as the Decision was based on the Asbury St. site but didn't have anything to do with the Varsity application. Peter Clark said the Board never evaluated the application, but Rick Mitchell disagreed. Mr. Clark stated that the hearing process for Asbury St. was different in that the Board collectively sat down and evaluated the application. The information was copied into the Town Hall site application, but was never discussed, according to Mr. Clark. Mr. Mitchell responded that Board members who voted in favor of the application believed the applicant had met the criteria and that they were reflected in the specific Findings, including the demonstration of need, determination that the height was within the requirement, and that the proposal was located in a heavily treed area. Mr. Mitchell believed the applicant met the burden of proof for the criteria for approval. The By-law stated the applicant needed to make comparative studies of all existing sites to compare with the proposed site and Mr. Clark said he had not seen any studies of comparable sites, including the Asbury St. Site or Gordon Conwell. Bill Olson said opposing and majority opinion were both included.

Claudia Woods said the Decision was written to approve the Special Permit and then indicated that a supermajority was not met. Brian Stein said the Motion was to approve. Bill Olson suggested deleting items one through ten as they were conditions for a permit that was not granted. Mr. Stein reasoned that they should remain in the event the Decision was overruled as the conditions would need to be incorporated. The term “granted” would be replaced with “if approved these would be the conditions.”

While Peter Clark said this Decision document was never put before the Board or discussed, Bill Olson said he agreed with what was written and felt it had been discussed. Brian Stein added that the only thing that had not been discussed were the Conditions in the Decision. The majority of the Board felt the Findings were met. Mr. Stein said the Conditions had not been discussed.

Motion made by Rick Mitchell to accept the Findings and Conditions of the Site Plan Review for 577 Bay Road Communications Tower as amended in today’s meeting.

Seconded by Richard Boroff.

Vote: 4 ayes (Richard Boroff, Rick Mitchell, Tim Olson, and Brian Stein) and 3 nays (Peter Clark, Ed Howard and Claudia Woods).

Minutes

Motion to approve the minutes of August 1, 2017 as amended made by Bill Olson

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Other Board Business

Asbury Grove

Bill Myer and Joan Wilkin (Asbury Grove) were present to discuss the operation of Asbury Grove and offer their concern about how the Planning Board and Board of Selectmen believed 40B would affect their 84 acre parcel of occupied land. Peter Clark asked how Asbury Grove could be involved with Cottage Zoning. Mr. Myer responded that Asbury Grove was a Corporation since 1873 and was owned by the United Methodist Church group as a two facility affiliate with an IRS non profit status. Homes were on leased land owned by the Corporation.

Open Meeting Law Violation

An Open Meeting Law violation was filed three weeks prior by a private citizens regarding the letter that three members wrote about the cell tower. The conclusion by the Attorney General was that it was not a violation as the three members present only saw a draft and did not constitute a quorum. The Attorney General did caution that it was not a comfortable manner by Board Members to be joining in decision making without having been in a public meeting without the rest of the Board knowing or being a part to what was transpiring. Peter Clark said Town Counsel told them to write the letter. Mr. Reffett responded that it should not have been

done absent of publicity. Claudia Woods said the three had never met together. Claudia Woods said the way Town Counsel worded her suggestion, Ms. Woods thought Town Counsel wanted to have the descenders write the letter, so they wrote it and signed it.

Motion made by Richard Boroff to adjourn.

Seconded by .Rick Mitchell.

Vote: Unanimous to adjourn at 10:49 pm.

Prepared by:

Marcie Ricker

Attest

Date