

HAMILTON PLANNING BOARD
MINUTES OF MEETING
January 29, 2019

Members Present: Richard Boroff, Janel Curry, Ed Howard, Rick Mitchell, and Brian Stein (Chair).

Associate Members:

Planning Director: Patrick Reffett

This meeting was called to order in the Memorial Room at Town Hall at 7:02 with a quorum established.

Approval Not Required (ANR) 10 and 12 Donald Road.

Eileen Lannon (10 Donald Road) and Tyler French (12 Donald Road) were present. A survey was conducted for a proposed addition to the Lannon home. The survey showed that the French's shed encroached on the Lannon's land. The application was to move the lot line, which also helped with the proposed addition. The line was originally awkward and the proposal improved the shape of both properties. No comments or issues were noted.

Motion made by Brian Stein to approve the ANR request for 10 and 12 Donald Road.

Ed Howard seconded.

Vote: Unanimous in favor.

Public Hearing – Communication Equipment Special Permit Petition by Mobilitie, LLC.

Small cell antennae in the Business District.

Brian Stein noted that the applicant had requested a continuance until February 19, 2019.

Motion made by Peter Clark to continue Mobilitie's public hearing until February 19, 2019.

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Public Hearing – Definitive Subdivision Application for Nazir Shamsuddin. 46 and 48 Meyer Road.

Patrick Reffett offered a brief recent history of the property. An ANR was originally requested to create the two lots. The Planning Board, following the recommendation of Town Counsel, chose to deny the request based on the facts at the time. The applicant appealed the denial to land court. The engineer and attorney prepared plans as part of the proposed Definitive Subdivision Plan, which was being brought to the Board based on the recommendation from the Land Court judge. Neither the Board nor Mr. Reffett had been a part of the Land Court process but had been involved with sessions with representing attorneys from Miyares Harrington. The Board had received letters from the Fire Chief and DPW Director.

Rick Mitchell read the notice to open the public hearing.

Peter Nechtem (the applicant's attorney from McClean, Holloway, Dougherty, and Sheehan) said the appeal was pending in Land Court. The proposal was for one lot of Meyer Road and two lots on the 50' private way (Meyer Road Extension). The Planning Board denied the Approval Not Required Plan in 2017. After discussion with Town Counsel, the applicant decided to submit a Subdivision Plan with a request for waivers from the Subdivision Regulations.

Project engineer Bob Griffin detailed the proposed improvements and waivers requested, which had been summarized in a filed statement. Mr. Griffin said the applicant would greatly be improving the condition of Meyer Road Extension, which served two houses further removed from Meyer Road. The proposal would widen Meyer Road Extension to 20'. The road would be paved for 415' with berms. Currently the road was 12' to 15' wide. The water main would be extended 340' down Meyer Road Extension with a fire hydrant installed at the end. A drainage system would be installed for the private way with new utilities for the proposed houses. The National Fire Protection compliant hammerhead for a turn-around would be located on Shamsuddin land. Mr. Griffin said he was only recently aware of the Fire Chief's concerns regarding the hammerhead turn-around.

Bob Griffin addressed the question as to whether the Shamsuddins had the right to develop the 50' right of way that they did not own in fee but had an easement over and asked the Board to refer to the memo he had submitted. Mr. Griffin said the Shamsuddins, like all abutters had a right of way along the entire width of the way. They owned up to the midpoint of the private way on respective sides and had an easement over the other half. Those rights of way were established in the 1950's by the Trembleys, the grantor of all the land abutting the 50' right of way. Those rights stemmed from the Subdivision Plan showing the private way. The same deed from the Tremblays, conveyed the rights of way over the lots, both of which were in the title for the lots abutting the private way. According to Mr. Griffin, there was a large body of case law that stated an abutter over a right of way had the right to make repairs as necessary for the enjoyment of the right of way. Mr. Griffin said case law supported exactly what the Shamsuddins were proposing to do. The cases were cited in the memorandum.

Bob Griffin showed the locus as he explained the topography and history of the area. The proposed subdivision lines were the same as the ANR plan. Mr. Griffin showed the existing house with access to the barn and access from the 50' private right of way as well as the two houses out back. The blue line (on the displayed plan) represented the in-fee-ownership while the red line represented the 50' right of way. Mr. Griffin said the existing pavement did not follow the centerline of the way as it was offset. The proposal would save the steep embankment to the east at the McCarthy's property. The road would be aligned in the direction of the Shamsuddin property. Overhead wires would bring utilities to the houses out back.

According to Bob Griffin, the proposed roadway would be significantly wider than the existing roadway. Granite curbs would be installed along the radius of the opening, which would be

wider (20' compared to 12-15') and paved. Bituminous curbing would be used to handle stormwater after the radius. The road would be crowned to shed water to each side and flow toward Meyer Road or back to the catch basin on each side of the road, then directed to the new drainage easement to flow over land to the wetlands near the existing railroad tracks. The drainage easement would be 40' wide and approximately 210' long. The proposed new houses would be on lots 2, and 3 with either renovation or replacement of the house on lot 1. Conceptual areas were shown on plans but approval of the driveway or house location was not being proposed. The Board of Health had approved perc testing on all three lots. The existing system on lot 1 would be relocated as it straddled the new lot line. The hydrant would be 340' from Meyer Road where the water line would tap into the existing water main. Valves would be installed to provide water to lots 2 and 3 from the new water main. The existing water lines for the existing homes would be upgraded from copper to allow for better water pressure and the new hydrant would improve fire protection for all lots.

Waivers included not being on the centerline of the right of way. Fire access was a proposed turn-around instead of a cul-de-sac. The diameter of the required cul-de-sac would be 120' with 100' for pavement. The hammer head proposal had a dimensions over 70'. The width of the road was proposed to be 20' with curbs on each side and a shoulder on the western side while saving the embankment on the eastern side. The required width was 32'. Subsurface utilities were required, but overhead wires existed on the street currently. No sidewalks were proposed as there were only four or five houses with no sidewalks to connect to on Meyer Road. A waiver was requested for a true north arrow but the arrow was aligned with plans of record at the Registry of Deeds. The arrow was 14 degrees off. A 4" base course was required but the proposal was for a 2.5" binder with a 1.5" finish course, which was conventional road construction suitable for the amount of traffic expected. Granite curbs were required but would only be used for the radius with asphalt curbs elsewhere. No street trees were proposed.

Bob Griffin said a cul-de-sac could be provided if the house were pushed back but it would create a greater impact on the neighborhood. Mr. Griffin thought the hammerhead was a reasonable solution for fire truck and delivery truck access. Mr. Griffin said the National Fire Protection Association required 70' from the end to the opposite side, but the proposal was for 75'. The 28' required radius was increased to 30'. The 20' expected width had been increased to 25'.

Ray Brunet (Fire Chief) referred to the similar situation of Alexander Way but that the proposed improvements were more acceptable than the first plan. Chief Brunet wanted a way large enough to accommodate two 10' wide plus mirrored fire trucks, which could pass despite snow piles in winter. Chief Brunet wished Bob Griffin had presented the plans to him for review before the meeting as most developers knew to do so. Mr. Griffin thought the plans automatically went to the Fire Department. Chief Brunet wanted to have a By-law enforcing the need for a cul-de-sac and wanted to have signs posted for no parking. Chief Brunet wanted a computer simulated analysis of the road which would illustrate how Hamilton's fire apparatus

would work within the area. Mr. Griffin stated that he would supply the simulation, which had been completed. Brian Stein responded that road widths were a balance for the community as 32' roadways were too wide. Even 1A was not 32'. A 24' road serving four houses that lead to a 16' connector road was odd. Mr. Stein added that he understood the Chief's concerns.

Brett McKechnie (52 Meyer Road) was opposed to the project. Mr. McKechnie wondered who would stop people from parking on the turn-around on private property. Bob Griffin responded that many privately owned roads had no parking signs and that being a private road did not stop the enforcement of traffic rules on the road.

Town Counsel Chris Heep (Miyares and Harrington) said a condition could be placed in the approval to ensure parking requirements as a matter of Subdivision Control or easement to keep the area clear. Brian Stein said Town Counsel's office sent the Board a letter on the legality of the Subdivision wherein they agreed with the applicant's attorney's statement. The applicant's attorney indicated that the applicant had the right to use the full width of the 50' right of way even though they only owned half in fee. Town Counsel's office looked at the cases cited in the letter and agreed with the conclusions that "as a matter of common law and case law, when property is bounded by a private way, the property bounded has the right to use the private way and right to use it carries with it the right to improve the right of way for its full width." The applicant had a right to improve and develop a private road if their property was bounded by it.

Attorney Dan Pasquarello was present to represent the McGuires (54 Meyer Road). Mr. Pasquarello distributed a letter to the Board and gave a background of the land in dispute. The McGuires were opposed to the proposal. Mr. Pasquarello said the property was subject to restrictions on previous plans that prevented additional residences and disagreed with the assessment of the use of the easement. Mr. Pasquarello said the proposal was not within the original intent of the easement. Mr. Pasquarello said it was true that while each of the properties owned to the center line of the private way, the use had to be reasonable. Mr. Pasquarello submitted to the Board what reasonable use was. No one had denied access to the Shamsuddin parcel but they did not have a right to convert the private way into a subdivision way, according to Mr. Pasquarello.

Dan Pasquarello explained the attached exhibits to include the Town assessor's map 30 showing the applicant's properties as lot 11 and 12. Lot 11 was historically comprised as part of lot 28 and 29 of the original Meyer Road subdivision (Exhibit 2). The bend of Meyer Road could be seen with lots 28, 29, 27, and 26 on the plan. Lots 26 and 27 eventually became Shamsuddin's parcel 12 and the McKechnie and McGuire property. Exhibit 3 was the 1955 ANR plan which created a private way. Lots 29, 28, and what was 26 and 27 became parcels A and B. The private way first came into existence in 1956 through another division by the Tremblays. Lots A and B became lots C, D, and E. Lot C became the current lot 12. Lots 28 and 29 later became lot 28.

Dan Pasquarello said there was no dispute that the purpose of this right of way was for access to the three lots C, D, and E. The applicant's counsel left out that there was a hand written notation on the top of the plan that the approval was based on the condition that only one dwelling or house designed for residence and accessory buildings be erected on lots C, D, and E. Currently one residence was on the Shamsuddin lot C, one residence on the McKechnie lot D, and one residence on the McGuire lot E. Lot E was divided into B1 and B2 (Exhibit 5). The McGuire property was lot B1 and a vast majority of parcel E. Lot B2 was 1 acre. The McGuires also owned a strip of land between B2 and the right of way for the purpose of access.

According to Dan Pasquarello, there was a restriction of how many residences were allowed on parcels and the original intent of what the right of way was for, which was parcel C even though it retained access on Meyer Road. Meyer Road Extension was to gain access to the McKechnie and McGuire properties and was essentially a private driveway. Due to the restrictions, the applicant would not be entitled to put two more lots on parcel C as there would be three dwellings when only one was allowed. Ms. Pasquarello said the plan could be modified under 81W the (Subdivision Control Law) but they did not have consent from the McGuire's to do that.

Exhibit 7 was the applicant's deed. The Shamsuddin deed addressed two parcels. The second page indicated the premises was conveyed subject to the benefit of all easements, restrictions, and agreements of record. Dan Pasquarello said the deed referenced the 1956 plan, which would be the first reason the Board should deny the proposal. Lots C, D, and E were limited to one residence per lot and the proposal violated the restriction. The 1960 subdivision plan restricted Lot 28 (Exhibit 6) as it concerned Lot 28, which was formally Lots 28 and 29. The first condition on the plan was that no more than one dwelling and garage be built upon Lot 28. According to the assessor's map 30, Lot 28 already had a residence on it.

Dan Pasquarello said the use of the easement was not intended as the proposed use. Converting the use of the easement for parcel C to access parcels 28 and 29 was not the original purpose of the easement. Private ways were supposed to be confined in their use for the purpose granted and could not be extended by the grantee, according to Dan Pasquarello, who thought the change would overburden the easement. Mr. Pasquarello thought the restriction on the lots should be sufficient to deny the proposal. The hammerhead in front of the McGuire's property would allow for emergency vehicles to back up in front of their home, which was not appropriate for a definitive plan. Mr. Pasquarello reminded the Board that they had already been in litigation over the roadway with the applicant's predecessor, which he said was denied in Land Court.

Rick Mitchell said the information was provided to Land Court when they adjudicated and that the Board should default to Town Counsel's opinion after they reviewed the information. Town Counsel had all the information presented in Land Court as part of the recent litigation, which was still pending. Trial was set for April. Town Counsel would review the provided information while the Fire Chief reviewed the hammerhead plan.

An abutter noted that the 1992 minutes indicated that a private way could not be used as frontage. Brian Stein responded that a true private way by proper subdivision or one built before the Subdivision Control Law was enacted in 1955 could be used as frontage. The Board did not think the road had been constructed before 1955 and no subdivision plans had been discovered other than the ANR plan, which is why the ANR was denied. Charlotte McCarthy, who owned lot B-2 came to the Board in 1998 with a subdivision proposal. Ms. McCarthy said she was denied frontage on the private way.

Motion made by Rick Mitchell to continue the public hearing on the Definitive Subdivision for Nazir Shamsuddin for the properties in question.

Seconded by Richard Boroff.

Vote: Unanimous in favor to continue.

Amended Motion made by Rick Mitchell to continue the public hearing on the Definitive Subdivision for Nazir Shamsuddin for the properties in question until February 19, 2019.

Seconded by Richard Boroff.

Vote: Unanimous in favor to continue until February 19, 2019.

Board Consideration/Vote 354 Highland St. Minor Modification to Special Permit.

Jill Mann (attorney) and Larry Smith (owner) were present. Ms. Mann updated the Board as to the progress of the demolition and the construction of the roadway. The demolition permit was granted and the stables and arena were being removed. The roadway was cut in 300'. Erosion control was around the entire property with the Con Com having given permission to proceed. The covenant required no building or sales until the Board released the covenant to allow the construction of a building for units 1, 2, and 3. The release would not include the sale or anything else.

The modified architectural plans were discussed for the newly named Village of Canter Brook Estates. The units would have the same footprint, dimensions, and setbacks. The new rooflines, windows with transoms, and trim would be more interesting, according to Larry Smith. Windows would be alternated and spaced throughout the community. The bay window would be removed. Two single wood-looking-vinyl (mahogany, cedar, and oak) stamped garage doors would replace the double garage doors.

There would be 23 individual units, eight of which would be single family, three sets of duplexes, and three sets of triplexes. More detail work would enhance windows with an oval window at the front door. Stone would be used around the front door and an overhang was proposed over the garage with canned lighting instead of fixtures. The rear elevation of the single family unit had changed. The door going into the master bedroom was changed to an oversized window. Transoms were over doors to the patio. The duplexes had the same details. A copper cupula was featured. Triplexes would have oversized windows with large corner board trim.

Brian Stein requested that the hip roof be replaced with a gabled roof to match the other gabled roofs as was illustrated on Sheet 242. Larry Smith agreed. Option B featured a 10' x 12' sunroom to open up the flow of the home, while Option C featured the same sized screened-in porch, which would not be heated or contiguous to the home. The additional cost/value would be \$35,000 per unit. Mr. Smith said the middle of the triplex units (1,300 sf) would sell for \$585,000 or (1,800 sf) selling for \$625,000. End units (2,350 sf) would also be available for high \$600,000's to low \$700,000's. The single family units (2,500 sf) would sell for approximately \$900,000. Prices were based on the Magnolia Shores Village prices.

Brian Stein and Rick Mitchell agreed the changes were improvements. Mr. Stein requested a bracket to visually hold up the overhang. A building permit for the model units would be sought in six to eight weeks with units being completed in July. Larry Smith said local preference would be given to residents and family members of residents. The marketing plan would allow everyone to know the specific prices.

Jill Mann said the applicant was asking for relief and execution of a partial release of the covenant and a substitution of the revision plans with acceptance of the new architectural drawings. The applicant would return for a release to sell units. In order to get an occupancy permit all pipes, drainage, and roadways needed to be completed.

Motion made by Janel Curry to approve a partial release of the covenant for the Villages at Canter Brook Estates to be able to construct the building for units 1, 2, and 3.

Rick Mitchell seconded.

Vote: Unanimous in favor.

Motion made to by Rick Mitchell to approve the proposed architectural changes for the Villages of Canter Brook Estates as shown on the plans submitted by the applicant with the changes acceptable to the Board and approved by the Board, dated 1/29/19.

Richard Boroff seconded.

Vote: Unanimous in favor.

Master Plan (Residential) Update.

The Board discussed plans to prepare the room for the meeting and that the consultant would call individual Board members about their roles and responsibilities. The glitch in the survey was discussed.

Board Discussion – Future Zoning By-laws.

Patrick Reffett noted that Dan Hamm had reviewed the existing By-law and thought it was a good template to insert microcell terms and requirements into. Mr. Reffett had inserted microcell terms the entire way through the document and added modifications such as the installation of poles. Mr. Hamm reportedly suggested that there were two areas where proposed

language should be revised including the removal of a performance guarantee requirement and annual certification demonstrating compliance. A public hearing would be set. Brian Stein said definitions needed to be added.

Steve Bourdeau (161 and 169 Bay Road) said a micro cell pole was being proposed in front of his property and he did not receive an abutter's notice. Mr. Bourdeau said he heard through Wenham that there would be 3.2 miles of poles along Route 1A. Along with abutter notification, Mr. Bourdeau thought a performance guarantee should be required to clean up the equipment when the use was over. Mr. Bourdeau was concerned about public safety as the one pole proposed for in front of his property was 35' from a bedroom and he noticed a warning on the pole not to get too close to the radio frequency half way up the pole. Mr. Bourdeau suggested multiple uses of existing poles but Brian Stein responded that the applicant said certain poles could not be used due to existing wires. Mr. Bourdeau suggested the MBTA lot and Patton Park poles. Mr. Bourdeau noted the need for less clutter and more viewable areas along Route 1A noting safety. It was agreed that annual certification was probably never completed.

Discussions with the Selectmen on February 4, 2019 were considered. The Selectmen would propose a Roadway Acceptance By-law or policy which came as a recommendation from the Planning Board. The Master Plan update would be discussed with the Selectmen.

Board Business – Annual Report

Patrick Reffett, Richard Boroff, and Janel Curry had completed the Annual Report, which would be distributed to the Town Manager's office the next day.

Motion made by Rick Mitchell to accept the Annual Report to be forwarded to the Town Manager.

Seconded by Ed Howard.

Vote: Unanimous in favor

Meeting Minutes – January 8, 2019 and January 22, 2019.

Rick Mitchell made motion to approve the minutes of January 8, 2019.

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Motion made by Richard Boroff to approve the minutes of January 22, 2019.

Seconded by Rick Mitchell.

Vote: Unanimous in favor

Updates

Patrick Reffett was reminded by the Town Clerk that members needed to sign the Conflict of Interest and Social Media Policy forms.

Adjournment

Motion made by Rick Mitchell to adjourn.

Seconded by Richard Boroff.

Vote: Unanimous to adjourn at 8:56 pm.

Prepared by:

Marcie Ricker

Attest

Date