

HAMILTON PLANNING BOARD
MINUTES OF MEETING
April 2, 2019

Members Present: Richard Boroff, Peter Clark, Janel Curry, Ed Howard, Rick Mitchell, and Brian Stein (Chair).
Associate Members: Laura Walsh
Planning Director: Patrick Reffett

This meeting was called to order in the Memorial Room at Town Hall at 7:00 with a quorum established.

Continued Public Hearing – Definitive Subdivision Application by Nazir Shamsuddin. 46 and 48 Meyer Rd.

Attorney Peter Nechtem represented the Shamsuddins. Bob Griffin, the applicants' engineer was also present. The applicant was previously before the Board on January 29, 2019 but had met with Fire Chief Ray Brunet and would incorporate his suggested changes. Chief Brunet had submitted a letter to that that effect. Nechtem said the improvements would greatly improve the current and dangerous conditions of the private way, despite neighbors' objections.

Bob Griffin showed the plan with the hammerhead turnaround and Lot 3 driveway as requested by the Fire Chief. The roadway was also widened from 20' to 22' and a sign was added to indicate "no parking/fire lane." A hydrant was moved closer to the hammerhead. A catch basin was moved but the drainage system stayed the same. A small retaining wall was required due to the widening of the roadway. There were no other modifications since the January presentation. People who lived along the roadway would maintain the retaining wall and roadway.

Attorney Chris Heep (Town Counsel) said he had submitted a letter to the Board responding to the abutters' attorney's issues. Mr. Heep did not believe any of the issues would result in the Board not being able to grant a subdivision approval. Both attorneys' letters outlining their arguments were on file. Attorney Heep concluded that the legal questions were title issues that needed to be figured out between private property owners likely with a land court judge and were not for the Planning Board to decide. The Subdivision Control law was specific in regard to access, traffic, drainage, and environmental issues and that was what the Board would be expected to act upon officially. A land court judge would be the only one to determine title rights.

Attorney Dan Pasquarello was present to represent the McGuires, abutters to the proposed subdivision. Mr. Pasquarello said there was no expressed easement to the property as the applicant claimed. Mr. Pasquarello said the successors to Parcels A and B owned to the midpoint of the way. The premises had been conveyed with the right of way over the southerly portion of the right of way to Lot B with the grantor retaining a right. Discussion ensued

whether the “southerly portion of the right of way” was a mistake or if it was an intent not to grant an expressed easement. It was argued that while the successors to Lot A had the right to use the portion up to the midpoint of the way, they did not have an expressed easement over the other 25’, which included the McGuires’ property. Mr. Pasquarello said the applicant needed to have the approval of the McGuires to have the Subdivision Plan approved by the Planning Board as it incorporated land owned by them. Mr. Pasquarello said the applicant must show evidence from the court that he had title to do this as was required in the Subdivision Rules and Regulations.

It was agreed that the title question would be headed for a decision in the event the application was denied or approved with the Planning Board being the defendant. Rick Mitchell recalled that Attorney Heep looked at the title questions and opined that the property abutted a 50’ right of way and the property had the benefit of a road and the right to improve it. Patrick Reffett said the Planning Board’s job was to determine whether or not the application met the criteria of the Subdivision Rules and Regulations. It was noted that other litigation was ongoing, which was not an appropriate basis to make a determination.

Attorney Dan Pasquarello argued that the parcel was not bounded by a way as all bound referred to other parcels of land that surrounded it and an expressed easement was absent. Pasquarello did not believe the application was an as-of-right Subdivision Plan as there were multiple waivers being requested. There was no consent to use of the abutters’ property with a Modification of the Subdivision under 81W. Pasquarello cited the Mathews v Planning Board case wherein notes on the Subdivision Plan and recorded covenants were considered for their recorded restrictions. Mr. Pasquarello said both he and Town Counsel Chris Heep agreed on the facts but disagreed on the interpretations.

Attorney Peter Nechtem (McClellan, Holloway, and Sheehan) was present to represent the Shamsuddins and said they had a right to use the entire width of the private way by an easement by estoppel as indicated in his submitted memo. Mr. Nechtem noted that there were two mistakes in the original deed, the first was being the description of the right of way and the second in the conveyance of the right of way. Mr. Trembly forgot to include the right of way at all in the first deed. Copies were distributed. Mr. Trembly tried to cure it by filing a confirmatory deed including the conveyance of the right of way. Copies were in the packet. Mr. Trembly was granting a right of way over the portion of the private way that he was conveying in fee, which made no sense. While it was backwards, the intent was clear to grant a right of way over the opposite portion of the right of way, the portion that Mr. Chittick was not getting in fee. Mr. Trembly wanted to retain a portion of the private way for himself that he was conveying to the grantee, according to Mr. Nechtem, which allowed both the grantor and grantee to have the right of way to use the entire width of that private way. Mr. Nechtem was confident that the land court judge would interpret the deed in that manner.

Abutter Brett McKechnie (52 Meyer Road) spoke against the proposal indicating that he would be negatively impacted. Susan Lawrence (Rock Maple Rd.) said there was not enough information to approve the proposal and cautioned the Board on making a decision based on litigation.

Attorney Dan Pasquarello reiterated that the Board did not have the authority to make the decision to approve the request. Planning Board Chairman Brian Stein responded that Town Counsel had opined that the Board did have the authority. Mr. Pasquarello suggested the applicant return to the Board after the court decided he had the right to the easement. Board member Rick Mitchell said the approval would be on the basis of the recommendation of Town Counsel that there was nothing that prevented the Board from moving forward applying the Subdivision Regulations in this case.

Attorney Heep said the 50' wide right of way had been shown on a plan and used since 1955 and had been used to convey lots on either side ever since. The expectation was that people would be using both sides of the road for the remainder of the use of the property. Mr. Heep said "it was his belief, based on review of all the deeds and all the plans, that the applicant owned property bounded by a 50' private right of way and where you own property bounded on a private right of way, you have a right to develop that road for its full length and width. The applicant had the right to improve the road as they had proposed to do in the subdivision application."

Jennifer McGuire (54 Meyer Road) asked if she needed to grant an easement to the two new property owners. Chris Heep responded that the two lots already had rights to the easement as it applied to the land and not the lots themselves. The easement would cover everything within what was once shown on parcel C of the old plan and by default to lots 1, 2, and 3 if the plan was approved. Ms. McGuire asked about overburdening an easement as the initial intent was to access the two existing properties. Mr. Heep responded that the subdivision parcel was made of two different old lots, parcel C and lot 28 with lot 28 being behind parcel C. Parcel C abutted the right of way and had the right for its full length and width, which was not true of Lot 28 but lot 28 could be added to parcel C as part of the development parcel provided that there was no structures put on what was once lot 28. Mr. Heep suggested adding the language as a condition of the approval. As long as all structures were on lot C currently, that would be okay and not an overburdening of the easement.

Motion made by Rick Mitchell that the Planning Board approve the Definitive Subdivision application of Nazir Shamsuddin based on the plan submitted and dated, February 11, 2019 with the following conditions: 1) that it remain a private road and 2) that any structures shall be contained wholly within the bounds of parcel C as shown on a plan entitled: "Plan of Land belonging to Noah A and Ethel M. Trembly, dated, 1956 and recorded at Essex Registry of deeds, plan book 1956 plan 704."

Richard Boroff seconded.

Vote: Unanimous in favor.

Motion made by Rick Mitchell to close the public hearing of the Definitive Subdivision application of Nazir Shamsuddin.

Seconded by Richard Boroff.

Vote: Unanimous in favor.

Public Hearing – Medical Marijuana Facility. Site Plan Review and Stormwater Management Permit for Green Meadows Farm. 654Asbury St.

Rick Mitchell read the public hearing notice to open the public hearing. Bob Patton CEO of Green Meadow Farm was present to introduce Kevin McGarry (project manager), Chris Zawacki (COO), Sean and Roxanne Costello (general contractor) and Benjamin Bork (director of cultivation).

Kevin McGarry expressed the group's desire to be a good neighbor and community partner. Mr. McGarry noted the property was in the RA District and the Groundwater Protection Overlay District. The ZBA would review the Stormwater Management permit. The team previously met with the Police and Fire Departments as well as the Patton Ridge neighbors and Patton Homestead group. Patton Ridge residents requested additional screening and landscaping in the southwest corner, which would be done. The land had been used historically as a farm with greenhouses and a farm stand. There were two residential buildings on the southern portion of the site. Mr. McGarry showed where the wetland areas, riverfront areas, and Natural Heritage and Endangered Species Habitat was depicted on the map. The limit of work was outside each area.

The project consisted of a 65,735 sf greenhouse. The eastern portion would be used for cultivation and the western portion would be used for processing and administrative support. The greenhouse's northeast corner was 85' from the property line and 102' from the edge of the road (Asbury). The southeast corner was 113' from the property line and 130' from the edge of the road. The Zoning set back requirement was 25' from the property line. The single story structure would be 14'3" tall at the eaves and 24'6" tall at the peak. The site access would remain the same but would be widened at the Fire Chief's request, which would require a small reconstruction of the stone wall. The internal access would be removed. Another existing driveway would remain for the residential structures. There would be 57 parking spaces for the 50 employees. There would be new landscaping and screening and a new small outdoor patio at the entrance. The loading dock and mechanical equipment would be on the western side of the building. Patrick Reffett requested the site design seek to limit the impervious pavement on the site. The Board would be provided with a turning template that generated the size of the driveway for delivery trucks.

The roof of the eastern greenhouse included stacked gabled roofs that were composed of translucent polycarbonate. The western portion had the same roof peaks but were made of corrugated metal of a medium, non-objectionable color.

Screening was discussed. A wood split rail fence would be incorporated. Plantings were proposed inside the parking lot and access road, as indicated on the landscaping plan. The original building placement was closer to the river but the applicant decided to keep out of the wetland/riverfront buffer areas and build in an area that was previously disturbed.

Traffic was discussed with a calculated 37 vehicle trips being generated during morning peak time and 36 in the afternoon. Asbury St. traffic counts were 2,073 vehicle trips per day. The applicant noted that the farm stand and crop share program had a greater impact on traffic than the proposed use.

The grading and drainage plan were presented. The overall drainage patterns of the site would be maintained and site topography was respected with the plans. The applicant submitted the Stormwater Management Report in accordance with the MA Stormwater Handbook. The information would be reviewed by the third party peer reviewer, Beta Group.

The Utility Plan was discussed. There would be new underground electric, telecom, and water services. The water service would be tapped from the existing water line for domestic use, fire service, and the new hydrant. The hydrant was placed where Fire Chief Brunet requested. An emergency generator and underground propane tanks were planned. The septic would be approved separately by the Hamilton Board of Health. Site lighting included 20' tall poles with LED fixtures that featured cut offs and fixtures were focused downward reducing the potential for light "spillage". The portion of the greenhouse with the translucent roof had shades that closed at night.

Water demand was discussed. A total of 8,250 gallons per day was expected of which 7,500 would be for plants. Up to 40,000 gallons could be collected from rainwater from the greenhouse roof and condensation from mechanical equipment. Water could also be brought in from an outside source during drought. Water that drips through plants is collected in floor drains and piped outside into a holding tank. The drip irrigation system would be computer controlled to not have excess water. 29,000 gallons could be collected from the roof per each inch of rain. Stormwater management assumed a conservative approach using best management practices. The cistern would be equipped with overflow out of the building.

The generator would be located in the back of the building and would generate 61 to 72 decibels when standing next to it.

Odor would be controlled through a state-of-the-art system. All exhaust locations would be treated with a high pressure fog before leaving the facility. Odors would not be masked but

rather eliminated through an organic odor neutralizing agent with a molecular bonding ability. The process was computer controlled.

Patrick Reffett introduced Jeff Maxtutis (BETA Group) who would be reviewing the project. Mr. Reffett reviewed all the items Mr. Maxtutis would consider including the outside generator, noise from scrubbers and what mechanicals were on top of the building that might affect abutters.

The security plan was regulated by the State. A 24 hour exterior camera would restrict unauthorized access. There would be dedicated security personnel during hours of operation.

National Grid would make minor improvements along the scenic road, which would require minimal disturbance. The stone wall would be rebuilt at the entrance.

Pesticides and fertilizers were discussed. All materials used in the agricultural process would be organic and kept inside the building being captured in the floor drains, which would be piped separately to a holding tank, then pumped out and disposed of. The material would never enter the septic or stormwater system thereby never entering into the ground or aquifer. The cultivation harvest schedule was described. There would be no customers on site as this is not a retail operation. Bob Patton said he was open to siding options of the front panel along the roadside and said he wanted to keep a barn-like look to better fit the rural feel of this part of Hamilton.

Christopher Abbot (123 Asbury St., Topsfield) said he had many concerns including noise in the middle of the night and the 20' tall pole lights. Kevin McGarry said there would no noise in the middle of the night and the lights were full cut off and dark sky compliant. The facility would operate from 7 am to 8 pm. The only windows would be facing west.

Ben Tymann (Counsel to Christopher Abbot) questioned the use of pesticides on the safety data sheet. Benjamin Bork responded that only 25B exempt products could be used on cannabis, which meant there was minimal risk. Most were essential oil based. Patrick Reffett had distributed a letter from Christopher and Debra Abbott to the Board, which indicated the Host Community Agreement discussed fourteen impact areas. Mr. Tymann said that when the legislature passed the statute for medical marijuana, it exempted medical marijuana from agriculture in the Zoning Act (footnote 3 of letter form the Cannabis Control Commission). Mr. Tymann noted the serious odor issues and wanted examples of how the fog interacted with chemicals as some were banned in the States. Pesticides being captured by the fog could be sent out and Mr. Tymann wondered what that meant in terms of toxins and pollutant drift. Mr. Tymann noted that most cultivation facilities were located in industrial parks.

The peer review would be conducted section by section. Kevin McGarry said the applicant would address the comments and resubmit answers with a cover letter. Some sections would be

covered at the April 23, 2019 meeting. A schedule would indicate which sections would be covered by certain dates. The Ipswich River Watershed Association would be contacted. Verifiable water usage would be provided in a more formal letter.

Motion made by Rick Mitchell to continue the public hearing for Site Plan Review for Green Meadows Farm and medical marijuana cultivation and processing facility until April 23, 2019. Janel Curry seconded.
Vote: Unanimous in favor.

Master Planning (Residential Update) Preparation.

While the consultants had to leave due to time constraints, Judi Barrett had prepared a fiscal impact document. Ms. Barrett had reviewed housing development and what that would mean to the Town in terms of demographic, finance, and fiscal impacts. Ms. Barrett looked at different development scenarios and theoretical examples. The sites chosen were informally discussed at the forum in early February. Rick Mitchell thought the analysis would include recommendations for zoning changes. Winthrop School and Chebacco Road were not being considered at all. While the report looked at larger developments of 40 houses or 60 apartments, it did not consider duplexes, which were highlighted as part of the survey by numerous participants. Mr. Mitchell suggested looking at the Scope of Services to determine what the consultants would provide other than public participation. It was hoped the consultants would look at the current housing stock and survey demands and recommend Zoning By-laws to address those. A financial analysis would be done for two families developments including the revenue expected and how to make the OSFPD more developer incentivized and the potential impact from those changes. Patrick Reffett would check with the consultants to determine what the final product would include. It was agreed that two out of three scenarios which were provided by the consultants were based on what residents did not want to see. The Town wanted houses on smaller lots, rental units, duplexes and town houses.

Two-thirds of the budget had been billed and paid for. Data showed that Hamilton would have a 106 student reduction while Wenham would have a reduction of 60 children in the next ten years.

Board Business

Signage By-law revote

Rick Mitchell made motion to adopt the new proposed language under Definitions 4 including language in 6.3.1.

Janel Curry seconded.

Vote: Unanimous in favor.

Minutes

Janel Curry made motion to approve the minutes of March 19, 2019.

Rick Mitchell seconded.

Vote: Unanimous in favor.

Adjournment

Motion made by to Brian Stein to adjourn.

Seconded by Rick Mitchell.

Vote: Unanimous to adjourn at 10:21 pm.

Prepared by:

Marcie Ricker

Attest

Date