

HAMILTON PLANNING BOARD
MINUTES OF MEETING
June 6, 2017

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

Others Present: Patrick Reffett

The meeting was called to order by Claudia Woods at 7:00 pm. in the Memorial Room. Ed Howard led the Board and members of the public in the Pledge of Allegiance.

ANR 28 Meyer Road

Bob Griffin presented the 9.5 acre plan with 200' of frontage on Meyer Road and 900' of frontage on the un-named private way. Mr. Griffin pointed to three lots, which in his opinion, met all the conditions of the RA zoning district. Mr. Griffin noted that private ways had been used for frontage in Massachusetts. Sufficient width, suitable grades, and allowance for vehicular traffic allowed for private way frontage and had allowed for access for the two lots that it served out back. Mr. Griffin said the way was paved with varying widths and compared the way with Meyer Lane (14' paved), Blackbrook Road (18' gravel), and Longmeadow (14' gravel). Mr. Griffin noted there were many examples where private ways were used as frontage and were often in worse condition than Meyer Lane which served two houses.

According to Bob Griffin, the ANR test was provided in that the way was endorsed by the Planning Board in 1956 and 1958, which proved it complied with the Subdivision Control Law. Mr. Griffin referred to the Terry and McCarthy court decisions regarding the property and noted that Judge Kilborn had determined that the Planning Board should consider a previous plan a new subdivision plan and not a modification. The Terry decision did not consider ANR plans and had no bearing on the submittal. The private way endorsement in 1956 and 1958 met the requirements of Subdivision Control Law but an attorney tried to make the case that the original filing did not meet the standards such as advertisement, according to Mr. Griffin. Mr. Griffin said both parties, the Town and Mrs. Terry, stipulated that the plan of land in 1956 was endorsed under the Subdivision Control Law by the Planning Board and met the requirements of the Subdivision Control Law, therefore, the three lots met the requirements of Subdivision Control Law and ANR.

Rick Mitchell recalled John Serafini had sent a letter to Bill Shields, which disagreed with Bob Griffin's opinion. Mr. Griffin responded that the letter was dated two years before Judge Kilborn made his decision that proved that Mr. Serafini was wrong. Mr. Griffin said, according to the Judge's decision, the point was mute. The MA land court ruled in favor of the Planning Board in 1998. In response to Claudia Wood's question if anything had changed, Mr. Griffin responded that the difference was that Mrs. Terry should not have filed a modification of the

subdivision plan but should have filed a new subdivision plan application, which Judge Kilborn supported. Mr. Griffin was confident that all the tests of the Subdivision Control Law were met.

Rick Mitchell asked Patrick Reffett's opinion, to which Mr. Reffett explained the law was muddy but the tests for ANR included having access to a legal public or private way and meeting the dimensional requirements relative to frontage. Mr. Reffett thought the lots met the criteria and saw no evidence to the contrary.

Ed Howard clarified the difference between Meyer Road and Meyer Lane. Bob Griffin noted the way was 500' long.

Jennifer DeCarlo represented the Brown family who were abutters on Meyer Road. Ms. DeCarlo asked to respond to the land court action made by Bob Griffin, which she said was not binding by the parties involved currently. A modification for a subdivision and an ANR were not the same, but the determination of the plan was due to procedural issues and not the merits of the plan. Ms. DeCarlo read that the Planning Board at the time was considering two lots but now the Board was considering three. The standards of the Subdivision Control Law would apply, according to Ms. DeCarlo, who added the applicant needed to show sufficiency of the private way to provide frontage. Ms. DeCarlo did not think the private way was approved as part of the Subdivision Control Law but was rather a common driveway. Ms. DeCarlo thought the creation of additional lots would overburden what was an easement. The two existing lot owners maintained the way. Ms. DeCarlo did not think this was a subdivision plan as the land under the way was never conveyed to the Town.

Jennifer DeCarlo discussed the mid 1980 Rock Maple subdivision and use if the applicant had the right to turn this into a subdivision. The private way was created on subdivision control land with conditions of one home on each lot. Parcel C was restricted to have one home on it, but that would include three separate buildings. Ms. DeCarlo said the fairness issue was solved that the predecessor had tried to develop the landlocked lots in the past. Ms. DeCarlo referred to the Zoning By-law as a reference for frontage and noted, in her opinion, that the common driveway could not be used to allow frontage. The sufficiency of the way was noted. Ms. DeCarlo repeated that she thought it should be a subdivision and the problem was that they did not own the properties of the way.

Claudia Wood clarified that there were two issues. The first issue was if the way was a private way or a common driveway. The second issue was that Lot C was one house lot with a condition that stated only one house was allowed on each lot. Peter Clark noted that the corner lot was non buildable lot and the way did not create frontage. Ms. DeCarlo said the existing lots did not meet the existing requirements because the Town did not have the standards of 1958 but the lots were grandfathered. Ms. DeCarlo asked the Board not to endorse the plan. Rick Mitchell suggested having Donna Brewer review the application to render an opinion. Brian Stein noted the 1958 plan and thought it would have land locked one of the lots if the way was not a private way as

they did not have frontage on Meyer Road. Ms. DeCarlo noted that private driveways were more common in the past. Ms. DeCarlo said it was a private way akin to an easement, all owners owned to the center, and there was a perpetual interest unless the way was conveyed to the Town, which it wasn't. One lot had frontage on Meyer Road. Brian Stein noted there was 50' on Meyer Road as listed in the deed.

Rick Mitchell made motion to postpone the decision pending Town Counsel. The Decision was continued at the request of the applicant. Both briefs would go to Town Counsel as Claudia Woods said the Planning Board could not adjudicate.

An abutter wondered how complicated the process could be to which Brian Stein responded that Town Counsel would decide if the way was a private way and determine the issue of the house restriction. Mr. Stein did not agree that a lot owner could not have frontage but the restriction was an issue. The lots were created after Subdivision Control Law was adopted, so the existing lot needed to have frontage.

Bob Griffin said he was happy to have more time. The restriction no longer existed, which was not a perpetual restriction like a conservation restriction. The McCarthy restriction B2 summary judgment said the lot was able to have a house.

Estate Overlay District Discussion.

Susanna Colerado Mansfield offered a history of the By-law noting the priority was on the 19 large landowners who needed help. The criteria for applicability was that the house was built before 1950, had over 5,000 sf of living area, and was located on 15 contiguous acres of land. Ms. Colerado recalled that she went to the Planning Board to help the few landowners protect their houses and not the land. Ms. Colerado said this was an attempt to redirect the energy that was devoted to protect the house versus the land.

Craig Walker (Patton Ridge Rd.) asked if Mrs. Patton was in support of the By-law to which, Ms. Colerado and Marcie Ricker said yes.

Marcie Ricker reviewed the history of the project. 2/3 of the property had conservation restrictions on their land. Ms. Ricker compared a standard subdivision with a Great Estate template. Ms. Ricker compared the new and proposed by-law. Rick Mitchell read the proposed uses passed at the previous Town Meeting. Peter Clark referred to Biolabs.

Most properties had a building envelope where additional expansion would be completed. Rick Mitchell said expanded residential and commercial uses were a benefit of the By-law which would create greater tax revenue for the Town. In response to an abutter's question regarding the objectives of the By-law, Rick Mitchell responded that this was an existing By-law and these were not dramatic new uses being proposed. The By-law expanded how many bedrooms and townhouses that could be constructed on a property.

Rick Mitchell explained the difference between affordable housing and the proposed By-law to the Patton Ridge abutter.

Claudia Woods said the purpose was to give the landowners some options. Owners were unable to maintain agriculture and most had conservation restrictions of the land. The Planning Board was offering solutions but was being thoughtful of those solutions.

Dave Thompson (Essex St.) said there appeared to be two stakes holders, Hamilton revenue and the homeowner but the abutters were not considered. Mr. Thompson noted the Board should respect the underlying districts because the abutters had reasonable expectations when they settled in the area. The three times additional building allowance was an insult to abutters, according to Mr. Thompson, who was an abutter to an 11,000 sf estate house. The building could feature an addition of 33,000 sf. Mr. Thompson liked the Yield Plan that had been removed from the proposal. Mr. Thompson did not like the open space criteria of 40% or that the addition could be four stories if the existing estate house was that high. Marcie Ricker responded that 40% open space and 50% wetland were consistent with other Town By-laws and noted commercial uses were not impactful as those uses from the original estate house uses. Peter Clark noted it was an alternative to a subdivision while preserving an estate houses with some commercial use.

Joe Stanislaw said no one had ever spoken to him and there was no guarantee of return on the investment of his estate home. Mr. Stanislaw was grateful that housing could happen on his property but concerned that he could increase the size of his building by 300%. Marcie Ricker responded that the number came from the Town of Lenox. Mr. Stanislaw suggested the Town be careful of commercial use definitions. Mr. Stanislaw said he wanted his tax bill reduced and said that he wanted to be able to rent out his barn, but did not want to have to develop the property to realize the potential of the By-law.

Claudia Woods recalled that Lenox was an example, which was the predicate number for Canyon Ranch, a wonderful property in Lenox. Mr. Stanislaw wanted to maintain the integrity of the house footprint and consider the wetlands. Mr. Stanislaw said he had a conservation restriction on his property. Peter Clark noted that there was restriction that allowed development to be restricted to the developable areas. Mr. Stanislaw said he just wanted two apartments on his land, to which Marcie Ricker said he could do it now. Mr. Stanislaw said he was worried about other properties.

Mary Cookson (Essex St.) cited Mullen Advertising, noting concerns about the resale of expanded properties such as the Mullen property, which was almost a rehabilitation facility and wondered about properties that might be expanded and their potential future uses. Rick Mitchell responded that it was a special permit so changes could not be changed without returning to the Planning Board and seeking a second use via an amendment. Claudia Woods considered adding three times the size of the original building and if it went belly up, there would be a concern

about what happened next. Ms. Cookson thought the language was ambiguous, to which Claudia Woods said it could be articulated to death, so the Board was looking to offer options.

Bill Olson said it could be residential and Brian Stein added that the new By-law was providing residential in response to what people wanted. Brian Stein said the whole reason for the residential use was to expand residential options in Town.

Jean Trigali (Patton Ridge) noted that she could not have children in her development, which was approved under the Senior Housing By-law. The Trigali family did not use any Town services and the taxes provided a great income to the Town. The Patton Homestead could become a Child Care Facility under the By-law. Ms. Trigali was curious about wetland restrictions, to which Marcie Ricker responded that 1/3 of the Town was wetland. Rick Mitchell added that it would be an additional restriction as wetlands were restricted separately.

The Board discussed if the Town-owned property (Patton Homestead) was still eligible for the By-law. Rick Mitchell said the Patton reuse committee and the Board of Selectmen had an interest in the future of the property. Traffic concerns would be considered under the special permit process. Claudia Woods suggested talking to the Patton Homestead Committee.

Jack Lawrence (Rock Maple) recalled the first effort to adopt the By-law, which he believed did not do the job. Mr. Lawrence asked if the By-law served a useful purpose. Mr. Lawrence thought the Maples in Wenham, looked like spot zoning but went to Town Meeting for approval. Mr. Lawrence suggested the Town consider the same path for the estate houses. Rick Mitchell said no one would propose a development hoping the Town would approve a development and recalled waiting for a senior housing development to come forward to be approved via a Town Meeting, which never happened.

Marcie Ricker asked if the attendees would be happy if the Bylaw simply accomplished creating condos in the existing estate houses. Suzanna Collerado said she hoped accessory buildings could be used to provide housing for people in town. Claudia Woods referred to the Accessory Apartment By-law, which needed to be improved.

Claudia Woods summarized that what the Board was hearing was that everyone wanted residential inside the existing estate house footprint. Brian Stein said without additional space, there would be no additional return. An abutter noted the benefit of renovating the estate houses to condos. Ms. Woods recalled her conversation with MAPC who suggested looking at Beverly Farms. Ms. Woods noted that there was little interest in commercial development.

Jake Demara, (Hatfield Road) wanted to know where the 19 homes were located. Mr. Demara noted 30 cars would be added to any development and that he would prefer a standard subdivision that what the By-law would create. Marcie Ricker set the example of an 8,000 sf house on a 20 acre estate with 14 lots improved with 3,000 sf. homes, creating 42,000 of new

housing and compared the development to one created by the Great Estate By-law where the 8,000 sf Estate House, if improved to Historic Standards would be allowed three times the square footage for an addition of 24,000 sf. The Great Estate By-law would create a development that would be half of what a standard subdivision would allow. Mr. Demara said he lived near the Cutler property and was worried about cluster housing, which terrified him because the cars made it worse. Affordability created more cars, according to Mr. Demara. Marcie Ricker responded that the Great Estate By-law was not deed restricted affordable housing but would provide for a variety of housing size.

Rick Mitchel said 40 units with 30 large four to five bedroom homes with 60 cars would be an option as would a 150 unit 40B with no local control. The Board was looking to offer an alternative but the Special Permit would allow discussion. An abutter suggested that a proposal should be allowed only if the owner had lived or owned the property for a specific amount of time.

Deb Stafford (Maple St.) wanted to have abutters included as having a voice regarding the impact on neighborhoods.

Phillip Sears (Gardner St.) recalled that the landowners had done a lot of stewardship of the Town, protected their land through restrictions, done a lot to provide for the Town, and kept open space. The Sears estate was 60 acres, of which 55 were protected, leaving an envelope for the house. Mr. Sears was concerned about finding a buyer to maintain the land and house as it was currently set up. Mr. Sears wanted alternative uses even though he did not agree with all the proposed uses, but appreciated the flexibility. Mr. Sears like B&B, restaurant or other types of meeting halls. Large tract housing was not in character of the Town.

Susanna Colerado wanted to encourage the Planning Board to visit the properties to note the unique qualities of the properties and potential effects on the abutters. Ms. Colerado said she was encouraged and referred to the Clark property which was an example of what she had hoped to accomplish with the By-law.

Marcie Ricker summarized that everyone was accepting of keeping residential uses within the footprint of the main house and outbuildings. An abutter, Mr. Blake (Sagamore St.) thought opening it up to commercial uses might cause regret. Mr. Blake was against density, against clusters and wanted single family homes, which was a nice fit with the town. While B&B use was acceptable to Mr. Blake, he did not believe that the Town was not much of a tourist attraction. Another abutter wanted B&B for her business visitors. Peter Clark mentioned that he had owned a country inn for twenty years. Rick Mitchell added that any change of use would need a return to the Planning Board for a change in the special permit with impact analyzation.

Mr. Dietrich (Moulton St.) wanted to ensure the voice of the abutters.

15 Walnut St., Abbreviated Site Plan Review

Linda Miogs was present to discuss the taking down of nonstructural walls to open up the dance studio on the second floor for an adult ballet class. There was no effect to the exterior or traffic. Ed Howard wanted to talk about noise pollution. Linda Miogs explained that the dance studio was in Peabody for 20 years, teaching ballet and classical dance. Parking would be consistent according to Patrick Reffett. The sign permit was already pursued, according to Ms. Miogs. Richard Boroff moved to approve the Abbreviated Site Plan Review of the existing space. Ed Howard seconded.
Vote: Unanimous to approve.

New Associate Member Candidates

The Board had the resumes of potential candidates and would vote for two. Discussion ensued regarding how the nomination would be done.

Other Board Business: June and July Meetings.

The cell tower special permit request for a balloon test would be held the weekend of June 16 and 17 from 9:00 am until noon. The balloon would be flown at Town Hall.

The Board decided to continue their discussion regarding cottage housing. Town Counsel would be contacted to opine on Meyer Road.

Adjournment

Motion made by Brian Stein to adjourn.
Seconded by Rick Mitchell.
Vote: Unanimous to adjourn at 9:55 pm.

Prepared by:

Marcie Ricker

Attest

Date