

HAMILTON ZONING BOARD OF APPEALS  
MINUTES OF MEETINGS  
Via Zoom 812 4366 7862  
Password 283847  
December 2, 2020

Members Present: Kim Dietel, Bruce Gingrich, Eric Salines, David Perinchief

This meeting was called to order by Kim Dietel at 7:02 p.m. with a quorum established via zoom. Roll Call: Kim Dietel – aye, Bruce Gingrich – aye, Eric Salines – aye, David Perinchief – aye

CONTINUATION FOR THE PUBLIC HEARING: For the application for an extension or alternation for a non-conforming use, structure or lot submitted by Andrew & Tasha Jose. A new drawing was submitted for 32 Garfield Avenue, Assessor's Map 47, lot 144, Zoning District 1A. The new plan for the lot is 9 ½ feet by the length of the house which is 24.3 feet so it is conforming to Arthur Avenue (over 25 feet) and equally non-conforming to Garfield Avenue with about 15 feet to Garfield Avenue so it is the same as the existing structure to Garfield Avenue. Tasha confirmed that the dwelling to Arthur is 26.4 to Garfield is 15.3 so it is even with the front and the back of the house the existing structure so it is equally non-conforming.

Motion made by Bruce Gingrich to approve the plan as submitted for this meeting with the 9 ½ foot extension of the existing dwelling that is within the 24.3-foot width.

Seconded by Eric Salines.

Roll Call Vote: Bruce Gingrich – aye, Eric Salines – aye, and Kim Dietel – aye.

Two weeks are needed to write the decision and file it and then there is a 20-day appeal period at which point a permit can be obtained from the building inspector.

PUBLIC HEARING: Special permit application submitted by Ryan McShera of Red Barn Architecture for the property located at 150 Echo Cove Road, Assessor's Map 52, Lot 24, owners Kai and Ann Wucherpfennig. The application request is to tear down the existing structure and rebuild a single-family structure in the R18 District. The lot is non-conforming with regard to the side yard setback as well as the lot itself is non-conforming -- does not have the required number of square feet in the lot area as well as it is short on frontage. The Wucherpfennig's are seeking relief from the zoning bylaw Section 4.0 Dimensional & Density Regulations.

On the site plan provided, 20,000 square feet is required in the zone and they have just over 10,000 square feet, 125-foot frontage is required and there is only 83 feet and the proposal does not introduce any new conformities. The side yard setback is noted in the chart, 15 feet is required where there is currently only 11 feet.

Ryan showed the Board the charts with the new site plans and went over existing vs. proposed structures to be considered. They have already received approval from Conservation Commission as well as Board of Health for Septic Design. The plan has been shared with many of the neighbors and did receive letters of support from several including Bill and Ann Howe at 138 and 140 Echo Cove Road, William and Heather McDonald at 167 Echo Cove Road and Heidi Chisolm at 164 Echo Cove Road.

Eric Salines explained that they are applying for a special permit vs. a variance because it is a safety hazard and an eyesore and they are not adding any new non-conformities. Bruce Gingrich said there are really no changes other than extending the non-conformity on that north wall.

Motion made by Eric Salines to tear this residence down and construct a new building in its place.

Seconded by Bruce Gingrich.

Roll Call Vote: Bruce Gingrich – aye, Eric Salines – aye, and Ki – aye. Unanimous in favor.

Kim Dietel will write up the opinion within 2 weeks and then after a 20-day appeal period, permits can be obtained from the building inspector.

**PUBLIC HEARING:** For the application of an extension or alteration of a non-conforming use. The property is located at 3 Beech Street, Assessor's Map 66, Lot 3AA, owner Eric and Elis Mimmo. The applicant is seeking relief from Zoning Bylaw Section 4.0 Dimensional and Density regulations and requests approval to construct a 21'6" x 47' addition in the rear of the existing dwelling.

Owners are proposing a back addition that is roughly 21.6 feet in width and 47 feet in length with a one-foot overhang off the back. The single-story addition with a full foundation is conforming to existing home which is currently non-conforming to the lot itself but it stays with the same line going down on the left side of the property. The current home at the front of the house is approximately 9.7 feet and at the end of the existing home is 10 feet and at the end of the proposed edition, it is 10.2 feet on closest neighbor's side. Roughly from the backlot corner, the actual structure with the foundation and structure will be 25.1 feet with an encroaching 1-foot roof eave overhang off the back and that puts it in 24.1 feet off the back corner of the lot line. Conservation has already reviewed it and approved the plans. The board agreed that the 1-foot overhang would not be a problem.

On the short side there are neighbors that own property that abut the fence, all three neighbors have their septic systems that are built up against the property line and all three septic systems encroach 15 feet from the property line so it is not buildable land that the Mimmo's will be building up against. After the septic systems, there is a right-of-way, private easement street and then their three homes are on the other side on the lake side.

Neighbor Denise Bisailon is at 37 Beech Street extension and Denise Kelly abuts the Bisailon's at the fence and Michael is on the other side of the road, not the lake side of the road. Number 2 is Kelly and #37 is Bicari and #24 is Michael Jordan who is on the same side but the private road is in front of his house. The land that is next to Mimmo is encased with his septic system. He can't build anywhere near that because his septic system along with other 2 septic systems are all in line abutting Mimmo's property line.

Open to public –

Denise Kelly at 2 Beech Street questioned the process with zoning bylaws regarding 15 feet back and that town hall was pretty firm that you generally had to keep within the bylaws unless there was a big hardship impact and looking at Eric's plans, it doesn't look like that much of a hardship to shift 5 feet so that it conforms with the towns bylaws.

Kim Dietel explained that because the existing structure is only 10 feet, you can continue a non-conforming.

Denise Kelly explained that the existing is 30 feet and he is going to put an additional 47 feet so he will be more than doubling the length that is right up against the property line. Denise questioned whether the structure needs to be 21 feet wide.

Eric Mimmo explained that his understanding is that he is allowed to build to match existing non-conforming structure and build an addition in conforming territory which would mean it would be approximately 16 feet by 47 feet and would not make them any closer. They would actually be gaining on the back corner of their lot as the existing home is 10 feet from the property line and the back corner will actually be 10.2 feet. They will be staying on the exact footprint as their home, will be just continuing it straight down.

Setback requirement of the leach field to the structure is thought to be 11.2 feet from the tank and 10 feet from the field and right now they are at 21.2 from the field.

Angelo Salamone the Building Inspector explained that extending the lot line of something that is non-conforming, as case law states, cannot become more non-conforming as it is already non-conforming. Therefore, the challenge is the decision may not withstand an appeal. Tricia Bicari of 37 Beech Street extension is concerned that the bylaws were not followed although the Mimmo's home was built in 1973, 20 years after the bylaws were put in place and yet it was built 9 feet from their property line which should be 15 feet and now there is a proposal to put an extension on that is larger, longer than the existing house.

Kim Dietel explained that if the lot is already non-conforming, the law allows them to continue that line and not be any more non-conforming.

Angelo Salamone explained to not respect the right to extend the applicant could appeal the decision because it would not withstand an appeal. Therefore, the applicant could bring the board to land court and sue according to case law.

Denise Kelly questioned why it had to go to an appeals court and Angelo Salamone explained that any non-conforming structure cannot be applied without going through the ZBA, they have to talk to the board before they change.

Bruce Gingrich explained that at 5.3, Non-Conforming Structures says “the Zoning Board of Appeals made by finding allow change to a non-conforming structure in accordance with this section, only if in terms that such change shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood.” That is where decision has to be made. There seems to be a lot of structure that is being added on to the non-conformity which can be detrimental to the neighbors.

Sheila Lang at 1 Beech Street, directly across the street questioned whether it is a Zoning Board question or a Town of Hamilton question in terms of septic system and how many bathrooms you can have and how many people can live there. She asked what the purpose of the big structure is and whether it will be living quarters or garages. She believes there are already 3 bathrooms in the house and she is not sure what the septic allows and also asked if the Conservation Commission would have to go into that or is it Zoning?

Bruce Gingrich explained that they would have to see plans and the Building Inspector would have to monitor it to make sure that additional bedrooms are not added because it is bedroom count, not bathroom count. More than a footprint plan would be needed with renderings showing what they are proposing to build and then the Building Department and the Board of Health are going to have to verify it’s use.

Angelo Salamone explained that the height would be the Building Inspector and the number of bedrooms and rooms would be the Board of Health. Those factors would be used for the determination of the septic size.

Board would need a more detailed drawing with dimensions, descriptions and include windows, bushes, etc., and would need to meet the requirements of the Building Department and the Board of Health before a decision can be made. Detailed drawings would include existing exterior elevations and the proposed, the inside would be more a Board of Health purview. Neighbors should get to see and have input should it be detrimental.

Eric Mimmo explained that it would be a single-story addition, the current home is a 2-story addition so the elevations are going to be even less non-conforming than the current non-conforming home. Eric showed the Board drawings that he has and will give the Board copies.

The decision will have to be continued to the next meeting on Wednesday, January 6, 2021 at 7 p.m. so that everyone who would like to look at the drawings has a chance to see them.

Eric Mimmo will email the pdf drawing to Angelo Salamone who will send them out to the Board. Neighbors can contact Mary Ellen Feener and the drawing can be printed out up to 11 x 17.

Motion made by Eric Salines to continue this application to the January 6, 2021 meeting to reconsider construction of a 21.6 x 47-foot addition to the rear of the existing dwelling.  
Seconded by Kim Dietel.

Roll Call Vote to table decision until the next meeting: Eric Salines – aye, Kim Dietel– aye, David Perinchief– aye

Minutes will also need to be approved at the January 6, 2021 meeting.

**Adjournment**

Motion made by Eric Salines adjourn at 7:56 p.m.

Seconded by David Perinchief

Roll Call Vote: Eric Salines – aye, David –Perinchief – aye, Kim Dietel – aye

Prepared by:

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Ann Schlecht	Attest	Date
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