



Town of Hamilton
Zoning Board of Appeals
Meeting Minutes of April 3, 2024

Pursuant to the Open Meeting Law, MGL Chapter 30 A, §§ 18-25, written notice posted by the Town Clerk delivered to all Zoning Board of Appeals members, a meeting of the Hamilton Zoning Board of Appeals was posted for April 3, 2024 at 7pm in Memorial Hall, 577 Bay Road. This meeting was held in person (and was accessible by Zoom as a courtesy for the public).

Call to order: *With a quorum present, Chair Gingrich called the Zoning Board of Appeals meeting to order at 7:00 PM, identified the meeting was being recorded and those present:* Bruce Gingrich (Chair), Steven Derocher, Andrea Philip, David Perinchief (Associate member on zoom). Also Present: Patrick Reffett, Director of Planning and Inspectional Services, and others as noted.

PUBLIC HEARING: The application is for the property owned by Mark & Michaela Schmalz, for the property located at 263 Linden Street Assessor's Map 54, Lot 108. Applicants are seeking a Finding under Zoning Bylaw Section 5.3.4.5 for dimensional relief from side yard set-back requirements.

The homeowner spoke on the application. He stated it was their desire to remain in the neighborhood and to add living space to their home within the existing footprint for their growing family. M. Schmalz said they spoke to the neighbors regarding the proposed project, who were supportive. Abby Ellis from Savoy & Nolan Architects in Danvers provided a conceptual board showing the context of the neighborhood and the existing house itself. In doing the site plan, they discovered the lot size, front yard setbacks, and side yard setbacks are all non-conforming and are seeking to make changes by extending the garage by four feet and putting a second-floor addition above the garage; the addition will not encroach any further in the side yard. The Board of Health has confirmed the septic would support another bedroom. A rendering of the final build was presented.

Vote: *The Board voted unanimously to allow dimensional relief for 263 Linden Street based on the information presented.*

BOARD PRESENTATION: Attorney Amy E. Kwesell, representing Town Counsel KP Law, PC, Boston, MA, will give a presentation to the Board which is planned to be an overview of the State Statute Chapter 40B and the Comprehensive Permit Review Process, as well a question-and-answer session/discussion regarding the topics presented, for Board Members with Attorney Kwesell.

P.Reffett noted that the presentation is about Massachusetts law for 40B, and that no specific project would be discussed during this meeting. Attorney Kwesell presented slides regarding 40B, starting with an introduction to the topic. In the case of a "comprehensive" permit, the ZBA acts for all the other Boards usually involved, but 40B subsumes and overrides other local bylaws, regulations, permits and approvals. In 40B, the phrase "consistent with local needs" refers to certain thresholds including the 10% affordable housing requirement; currently, only 5.67% of the housing in Hamilton is affordable. A town may deny a comprehensive permit if its housing is already "consistent with local needs," but if it is not, the applicant may appeal to the state Housing Appeals Committee (HAC). An applicant must obtain a project eligibility letter (PEL) from the state that the project qualifies under 40B; this is not appealable. There is a public hearing requirement the same as 40A housing. A site visit is important, as are the deadlines to open and close the public hearing process. Outside consultants are also very important as these are large proposals, peer review is very important. The consultants do not go out and do their own studies, but they will point out problems with the studies submitted by the applicants. The ZBA can approve as submitted, approve with conditions, or deny, but denials are troublesome as it will be appealed to the HAC, and there is a strong presumption in favor of housing on appeal. There are a series of conditions that must be followed, including that a decrease in units must be for valid planning or health, etc, reason. The appeals process and application modifications were also described.

A question-and-answer session continued, with questions regarding cases that have happened in other towns, such as where applications have been denied, and what happened next. There were questions about applying regulations, including septic requirements, about conditions that can be applied.

Ken Whittaker, retired attorney and President of the Board of Save the Chebacco Woods and Watershed, spoke representing the Hamilton residents of that organization. He highlighted a provision in the 40B regulations that allows the ZBA to deny a project early on, in the first 15 days, and that denial would last for at least a year. He handed out copies of two provisions in the regulations, including CMR 56.031. A provision in the chapter allows for a denial if the project has previously been denied in another form, and is under appeal in another court. He read segments of the regulations. He advised ZBA to look more closely at the regulations.

Al DeGroot, spoke via zoom. He advised that the watershed really needs to be considered in the project being presented on May 1.

Attorney Kwessel insisted that the discussion on the specific site cease immediately as the discussion was nearing an Open Meeting Law violation and discussion on this agenda item ended.

Regular Business:

- **Updates from the Chair** – next month the committee will be meeting at the library.
- **Meeting Minutes** – March 6, 2024

Vote: The Board voted unanimously by roll call to approve the minutes of March 6, 2024.

Adjournment:

Vote: The Zoning Board of Appeals voted unanimously to adjourn at 8:05PM.

Respectfully submitted by

D. Pierotti, Recording Secretary

4/7/24

The minutes were prepared from video.