

HAMILTON ZONING BOARD OF APPEALS
MINUTES OF MEETING
September 1, 2021
7:00 p.m.
Hybrid Zoom
814 3988 7715
Passcode 543039
Town Hall Memorial Room
577 Bay Road, Hamilton, MA

Members Present: Bill Bowler (Chairman), Bruce Gingrich, and David Perinchief (alternate member).

Others Present:

This meeting was called to order with a quorum established. Under the Board of Health Guidance, the Board would be able to meet in person. Petitioners and their representatives would also be able to meet in person. All other interested parties needed to meet via Zoom.

Public Hearing – 31 Rust St. A variance application seeking relief from Zoning By-laws in Section 4.0 dimensional and density regulations, Section 3.2 Accessory uses, Section 5 Non-conforming uses and structures, to keep a recently constructed 10' x 12' gazebo on the lot. Assessor's map 55, Lot 163. The owner was Jessica Kennedy.

Jessica Kennedy was present and gave her history while distributing information and photos regarding the property. Ms. Kennedy said she was confused as she had not found information regarding pergolas or gazebos. Ms. Kennedy received a letter from the Building Inspector stating that she needed to move her shed due to an accessory structure zoning violation. The options provided for Ms. Kennedy were to relocate the shed, remove the shed, or apply to the Zoning Board of Appeals. Ms. Kennedy said the structure should be considered a pergola and not a gazebo, according to the definitions. The structure did not have sides, according to Ms. Kennedy. Ms. Kennedy said the structure was not permanently fixed to the ground.

Bill Bowler said he had consulted with the Building Inspector. The By-law did not define pergolas or gazebo but referenced structures. Mr. Bowler asked the Building Inspector if the structure needed a building permit, to which the Building Inspector responded that it did as it was a structure. The By-law defined structure. Jessica Kennedy responded that a structure, according to Section 11, was a structure having a roof or cover and forming a shelter for persons, animals, or property. Mr. Bowler thought that the pergola did provide shelter and it could be argued that it was a structure. Ms. Kennedy said she was told a structure of less than 200 sf did not need a building permit.

Bill Bowler suggested the Board be given a chance to review the topic. Jessica Kennedy added that the structure could be moved. Bruce Gingrich wanted to review the State Building Code to determine the definition of structures.

The meeting was continued to October 6, 2021, at which time neighbors would be able to weigh in on the topic.

Continuation of a Public Hearing – 14 Boston Ave. A Variance application seeking relief from Zoning By-laws in Section 4.0 dimensional and density regulations, Section 3.2 Accessory uses, Section 5 non-conforming uses and structure, for the construction of a shed. Assessor's map 47, Lot 104. The owner was Shari Fecteau.

Bill Bowler reviewed the project from the last month, noting that the Town had received an email from the applicant to withdraw without prejudice.

Motion made by Bruce Gingrich to allow the applicant to withdraw the application without prejudice.

Seconded by David Perinchief.

Vote: Unanimous in favor of voting members. David Perinchief abstained.

Continuation of a Public Hearing – 434-436 Asbury St. A petition submitted by Essex County Habitat for Humanity, 14 Park St., Danvers MA for a comprehensive permit pursuant to ZBL Ch. 40B for the construction of ten dwellings, five duplexes which would include four one-bedroom, two two-bedroom, and four three-bedrooms. Each dwelling would be sold to households earning 40 to 60% of the area median income, each would have affordability deed riders and each would be permanently affordable. Assessor's map 37, lots 44 and 51. Zoning District R1B. The property was owned by Phillip C. Marcorelle Irrevocable Trust 2020/Essex County Habitat for Humanity.

The application had been reviewed by Robert Puff (peer reviewer) and discussions had occurred between the applicant and the conservation agent. Bill Bowler said he had spoken with special legal counsel. A draft decision and would be prepared for the October meeting. Mr. Bowler said the topic for the evening's meeting would be the waivers. An update in ownership was announced. The property was now owned by Essex County Habitat for Humanity.

Will Cook (Morin Cameron Group) said the proposal would increase the 18' access drive to 22' wide based on the Fire Chief's comments. Plans were revised and sent to Robert Puff. Minor drainage impacts had been revised in the latest plan. Mr. Cook said he and Brian Colleran (Conservation Agent) met on site and went through items in his two letters. There was a difference of opinion regarding if the lot needed to be in accordance with local By-law changes (December 31, 2007). The 25' no disturb zone had been increased to 50' for new construction. The two lots had been conjoined and the one lot had a structure on it, so Mr. Cook said the lot had been already been constructed upon and was not subject to the newest provision. The lots had been created via an Approval Not Required process and no legal lot had been created or no

transfer of title had occurred at that point, according to Mr. Cook. Mr. Cook continued that if Mr. Colleran disagreed with the logic, the applicant would request a waiver.

A letter written by Robert Puff, dated August 31, 2021 said he continued to work on drainage and stormwater management review. He had a few comments and differences of opinion. A revision would occur and Will Cook requested that the Board approve the plans conditioned upon the revision. Mr. Puff wanted to see a cross section, modified weir detail, calculation on a catch basin, and a change from a single rim to a double rim, which the applicant provided that day. A 5' manhole and spot rays would be added to the plan. The final revisions should allow the Board to approve the comprehensive permit.

Bill Bowler wanted to see the 25' and 50' no disturb zones shown on the plan. If the 50' had to apply, the area would be occupied by a building but the assumption was the impact would be small as the project was a cluster development, which was all in the front of the lot. If the 50' were respected, the drainage would need to flow out back, where clearing of trees and grading would need to occur. The proposal continue to comply with the State Regulations. Patrick Reffett said Brian Colleran and the applicant discussed drainage, retention facilities, and design. Mr. Colleran would provide a summary.

A list of requested waivers were part of the initial application. The 25' no disturb zone waiver was additional.

Hamilton Zoning By-law Section 3.0 - Table of Use Regulations. Two or more dwelling units in a residential second floor and above when part of a mixed use building or development not permitted in an R1b zone. The property was in an R1b zone. The applicant was proposing five two-family dwelling units. Bill Bowler said he was comfortable granting the waiver.

Section 4.0 - Dimension and Density Regulations from the table. The minimum lot area in the R1b zone was 40,000 sf. There would be ten units and the size of the building was 20,749 sf. The cluster development would be a 40B project, which was within the guidelines. Bill Bowler assumed the waiver would be granted.

Section 6.0 - Driveway Standards. The By-law called for a centerline radius of 60' for the driveway. The maximum grade should be 10%. The applicant was requesting a centerline of 34' and a maximum grade of 11%. The Fire Chief would be able to access the site with his apparatus. Bill Bowler was prepared to grant the waiver.

Section 7.0 – Special Regulations. 7.2 of the Cell Tower By-law required a distance from the tower should be 200' excluding existing structures. The proposed waiver requested a setback of 125' from the proposed structure. Patrick Reffett noted the structure was 109' tall so the fall zone would be covered. The cell tower was fully enclosed with a 7' chain link fence. The transformer and generator were outside.

Section 9.0 – Groundwater Protection Overlay District. Any use that would render more than 15% or 2,500 sf of the proposed development. The total coverage within the lot would be 12,880 sf. The right of way and the new width were not included. The coverage was slightly over 15% (it was 16% to 17%) but more than 2,500 sf. Bill Bowler wanted to ensure that Brian Colleran found the coverage acceptable and if not, was prepared to grant the waiver.

Section 10.0 - Site Plan Review. Bill Bowler noted that by definition of the comprehensive permit, Site Plan Review was being accomplished. Mr. Bowler thought the waiver would be granted.

Stormwater Management. Permit Rules and Regulation 40B permit procedures. The independent stormwater management review was asked to be waived as it was governed by the Comprehensive Site Plan decision. Under 40B, the ZBA had the power to deal with all issues. Bill Bowler found the waiver acceptable as the project had been reviewed by an independent consultant.

Comprehensive Permit Rules of the ZBA. Section 2.0101A Required Materials. Proposed lighting and photometric analysis. The Rules required a photo metric analytic but the applicant was asking for a waiver as there would be mounted lights on the building. There would be no driveway lights. All lighting would be dark sky compliant. Bill Bowler agreed with the waiver.

Comprehensive Permit Regulation Environmental Impact Analysis had not been provided as it was covered under the peer review and Conservation Commission. Bill Bowler agreed with the waiver.

Comprehensive Rules Traffic Impact Report had not been provided because it was a small scale project. Bill Bowler agreed with the waiver.

Conservation Commission waiver. General Provision regarding the required mitigation plan might be included but would not include planting of native landscaping, wildlife, or materials. The cleared areas would be loamed and seeded over the septic system and stormwater basins with conservation seeds. The applicant was not clearing to create lawns. Bill Bowler agreed with the waiver.

Conservation Commission waiver. General Provision. Consideration of alternatives required the applicant demonstrate an alternative analysis. Bill Bowler agreed with the waiver.

The Town By-law required larger projects show trees greater than 6" in diameter at 4' from the ground in the AURA be shown on the plan. Trees to be removed must be marked and flagged. The applicant supplied a tree line on the plans as the trees were part of a mature forest and the plan would include hundreds of trees. Brian Colleran agreed with the waiver. Bill Bowler agreed with the waiver.

Bill Bowler agreed to waive the Wildlife Habitat Study.

Section 3.2. Bill Bowler agreed with the waiver that the applicant did not need to agree with the new provision to respect the 50' no disturb zone but could respect the 25' no disturb zone.

Brian Colleran was on Zoom but was inaudible. Bill Bowler said the ZBA tentatively approved the waivers and if Brian Colleran wanted to discuss the topic further, he could attend the next meeting.

Bill Bowler said he thought the project was well designed for the site and that a draft decision would be written for the October meeting. A vote would hopefully take place in October. The hearing for 434-436 Asbury St. was continued until October 6, 2021.

MEETING MINUTES

Motion made by David Perinchief to approve the minutes of August 11, 2021.

Second by Bruce Gingrich.

Vote: Unanimous in favor of voting members. David Perinchief abstained.

UPDATES FROM THE CHAIR.

The Selectmen would appoint Andy Phillip as an alternate on September 7, 2021. The alternate would be approved as a full member.

ADJOURNMENT

Motion made by Bruce Gingrich to adjourn at 8:25.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Respectfully submitted as approved at the October 6, 2021 meeting.

Bill Bowler