

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
February 6, 2018

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, and Brian Stein (Chair).

Associate Members: Chris Sheperd

The meeting was called to order by Brian Stein at 7:02 pm. in the Memorial Room.

**Approval Not Required. Gordon Conwell Seminary. 130 Essex St.**

Paul Donohoe was present to discuss the application. Parcel 1 (19.75 acres) was being subdivided from the remaining 102.5 acres, which accounted for the remainder of the Seminary campus. Parcel 1 had 394' of frontage on Miles River Road and 1,762' of frontage on Bridge St.

Patrick Reffett said he had reviewed the application for compliance and that State law required two things, frontage and access. In the R1b district, 175' of frontage was required. Access would be from Miles River Road and Bridge St. Mr. Reffett found no issues with either requirement.

Peter Clark recalled that the Affordable Housing Trust had been looking at the parcel and Harborlight had been asked to talk to the Seminary. Patrick Reffett recalled it was part of a multi-property list to be evaluated at that time and that the Planning Board thought it should be considered for further review. Mr. Reffett suspected that the future of the parcel may be for affordable housing with the Seminary conducting a solicitation for the property via bids from interested parties. Mr. Clark referenced the payment in lieu of taxes issue and asked if it might be possible for the Selectmen to obtain preference for the acquisition as a trade. Mr. Reffett said he had sent a copy of the plan to the Board of Selectmen.

Brian Stein made motion to approve the Approval Not Required plan for 130 Essex St.

Rick Mitchell seconded.

Vote: Unanimous in favor.

**Board Discussion Nuisance By-law.**

David Smith presented the proposed Vacant, Unsafe, and Dilapidated Building By-law to the Board. Mr. Smith showed photos of problem properties. Mr. Smith defined the State Sanitary Code, which protected a tenant's right to decent housing but was of little value to neighbors.

David Smith explained the process as to how the By-law originated. Mr. Smith had been encouraged to develop a Nuisance By-law to give the Town the tools it needed to deal with problem properties as the Selectmen had no legal means to address problems. After researching

comparable By-laws, Mr. Smith met with Michael Lombardo and Donna Brewer to determine the legality of the By-law. Mr. Smith also met with the Police Chief, the Director of Council on Aging, the Asbury Grove Association, local realtors, and the Board of Selectmen. Mr. Smith said a public hearing had been held.

David Smith defined the terms “abandoned” (an owner who did not pay taxes), “vacant” (not lived in and no furniture), and “unoccupied” (no one living in the furnished house). Mr. Smith said there were eight properties that were the problem. All were unoccupied or vacant, according to Mr. Smith.

According to David Smith, the By-law would not allow an individual to wage war on a neighbor over the color of their door or bushes. The common interest of the general public was the driving force for the By-law. The proposal included a vacancy of 180 consecutive days. Mr. Smith indicated that the proposal would induce owners of such properties to sell. Chris Sheperd questioned what might happen if a home were vacant for 181 days.

The By-law would be complaint driven, according to David Smith. The Building Inspector would make an assessment, with appeals being directed to the Town Manger and the Board of Selectmen. The Building Inspector would have the discretion to work with the owner to meet upon a mutual solution. Enforcement would include other agencies such as the Council on Aging in the event that an elderly owner was emotionally, physically, or financially unable to maintain the property. Town resources would be used before entering the violation and fines process. A Notice of Violation Orders would be issued with fines spelled out and a reporting process would be determined.

David Smith talked about the public hearing that had been held and indicated that unanimous support of attendees had occurred due to frustration with problems that had been going on for years. Mr. Smith noted similar attributes of property owners. Richard Boroff noted one home where an elderly woman still lived and that the neighbors paid to have the garage torn down. Mr. Smith was surprised the property was occupied as it was on the problem properties list. It was agreed that the Council on Aging could become involved to solve the problem.

Rick Mitchell thought contextual comments needed to be added and would send his comments to David Smith. Mr. Mitchell recalled that neighbors to the property on Meyer Road found an obscure State law that forced the owner to make a few improvements to his property. Mr. Mitchell said he would make additions to the By-law to cover the situation of when a home was not completed.

Peter Clark referred to instances when a family would not be able to maintain a property and described the Cutler property, which was torn down. The property purchased by Mr. Clark in the 1970's was an abandoned property.

Ed Howard suggested adding the Fire Inspector as an element of the By-law. Patrick Reffett offered his concern about the resourcing of the By-law as the Building Department would be responsible for the work load. Mr. Reffett would speak with Town Counsel regarding the incorporation of terminology for the funding of the work.

Chris Sheperd was concerned about residents who might be away for six months and neighbors complaining about the absence. David Smith thought rewording of the section might be appropriate. Mr. Sheperd suggested extending the 180 day limit due to health or summer home situations.

Brian Stein said he believed the Planning Board was in agreement with the Town By-law but wordsmithing would be needed.

**Board Discussion Demolition Delay By-law.**

Bill Olson, who was absent, had submitted comments based on notes and recollections. The information was given to the Historic District Commission. The Board of Selectmen had discussed the By-law. On March 6, 2018, the Planning Board and Historic District Commission would hold a public hearing to discuss the article. The same evening the removal of the Conservancy District would be discussed during the Zoning By-law public hearing. Ed Howard said there was positive and negative feedback at the Board of Selectmen meeting regarding the Demolition Delay By-law with a realtor and developer being opposed and the Historic District Commission being in favor. 1940 had been established as the breakpoint year for determination.

**Board Discussion Regarding Annual Report and Potential Articles for Town Meeting.**

Claudia Woods would provide solutions as well as problems regarding accessory apartments. Patrick Reffett said he had received comments to the Annual Report, which were incorporated into the final edition.

Motion made by Brian Stein to approve the 2017 Annual Report as presented.

Rick Mitchell seconded.

Vote: Unanimous in favor.

**Adjournment**

Motion to adjourn made by Richard Boroff.

Seconded by Rick Mitchell.

Vote: Unanimous to adjourn at 8:20 pm.

Prepared by:

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Marcie Ricker

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Attest

Date

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
January 23, 2018

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

Associate Members: Janel Curry and Chris Sheperd

Staff: Planning & Inspections Director Patrick Reffett

The meeting was called to order by Brian Stein at 7:02 pm. in the Memorial Room.

**Board Discussion regarding the Cutler Rich Property**

Michael McNiff and Bob Griffin were present to discuss the proposed plans prior to any formal application to the Town. Mr. McNiff said he had the 40 acre set of parcels under agreement. The combined parcel had frontage on a variety of streets. Mr. McNiff said previous plans proposed by others included a cottage housing development and other developments of up to 18 lots. Mr. McNiff was proposing eight lots, five of which would be approached from Asbury St. and three of which would be accessed via Maple St. extension. The lot for the demolished Cutler home and the Woodland Meade lot already existed and were included in the eight lot proposal. Mr. McNiff said he had spoken with the Building Department, the Planning Department, the Fire Department, and neighbors. The general consensus was that the impact of this development was less than a larger development.

Bob Griffin presented an aerial photo of the area showing five parcels of land (1 acre, 1.8 acres, 3 acres, 18 or 19 acres and 17 acres). The entire parcel was 43 acres. The bordering vegetated wetlands had been flagged and recently verified. 95% of the property was in the R1b District with the remainder in the R1a District. A thin strip of land near the Christ Church was in the Groundwater Protection Overlay District (GPOD). The existence of a flood plain and the wetlands did not change the land available to work with. The Conservancy District existed on the parcel as did a building restriction in an area in the Woodland Meade section. The bridle trail easement was shown.

The preferred plan was shown with five houses in the Porter Lane area, which were in the GPOD and required 80,000 sf of land. One lot had frontage on Woodland Meade and one on Porter Lane where the house was torn down. Two lots were on Cunningham Drive, one of which was in the in R1a District and one of which was in the R1b District with little bigger lot. Mr. McNiff noted soil testing in the area with good soils for septic being present. The lots near Maple St. had not yet been tested.

Michael McNiff said he proposes to construct an 18 to 20' common driveway for the four houses in the driveway area of 100 Maple St. with a hammerhead turning area. Mr. McNiff said he had spoken with the Police and Fire Departments already. The common driveway required a special permit as it accessed more than two lots.

Alternate plans were shown. One plan featured a 1,200' loop road from Porter St. to Maple St. with houses along the sides. The road used the existing wetland crossing. The other plan included a cul-de-sac off of Maple St. with four houses and a drive approximately 700 feet in length. A waiver for the road length would need to be included.

Michael McNiff said there would be three lots off of Maple St., which would require a special permit for a shared driveway as the Zoning By-law requirement was for two lots maximum. The five lots with frontage on Porter St. would be divided via an Approval Not Required filing. Richard Boroff said the lots were separated by wetlands from their frontage.

Michael McNiff said the size of the houses accessed via Asbury St. would be 3,000 to 3,400 sf and those accessed via Maple St. would be 2,800 to 3,200 sf, all with 4 bedrooms, 2.5 baths and two car garages. Maple Street would be improved and widened for the development. The Fire Department wanted a fire hydrant within 1000 sf and the road width to be 24' with a 42' turn around.

McNiff said he would likely undertake no wetland filing due to the better lay out and Lot 5 off of Woodland Meade was pre-approved. There was a restricted area on a portion of the lot. Mr. McNiff added that he had spoken with Mr. Lake (attorney for Woodland Meade) who thought the plan was a better solution than alternatives.

Brian Stein said the Planning Board's purview included the extension from Maple St. and whether the common driveway could be increased to more than two lots. Peter Clark noted the length of the street should be considered. Michael McNiff explained that the driveway would follow the existing driveway to 100 Maple St., for 200' then separate to serve three houses. The deed provided the right to cross and improve the access to the property.

Wetlands had not been approved by the Con Com, but the wetland scientist who laid them out rechecked them and determined that they were the same. According to Peter Clark the Conservation District didn't always show the wetlands. Michael McNiff said the Conservation District was shown by elevation with the Asbury St. portion being at elevation 55.2 and the Northern portion with an elevation of 49.2. Bob Griffin said all construction would be outside the Conservancy District.

Richard Boroff thought the common driveway was well laid out and Peter Clark added that it was better than crossing the field. Brian Stein said it was better than connecting Maple St. to Porter St. Michael McNiff said he liked the unpaved country look. Rick Mitchell wondered

about snow storage. Camilla Rich said snow was piled up at the end of her 100 Maple St. driveway. Bob Griffin responded that there were various places to locate the cul-de-sac as the lots were quite large. Claudia Woods agreed with keeping the driveway unpaved as it was a pretty rural piece of land.

Jack Lawrence (105 Rock Maple) discussed the need to be able to continue to use the bridle trail as it was an important access to the schooling field for the Harvard Polo team. Michael McNiff said he would respect the trail and whatever was deeded on the property but would not touch the neighbor's fence on the 100 Maple St. property. The Woodland Meade Association would continue to maintain the Woodland Meade portion of the trail.

Deb Safford (46 Maple St.) thought the proposal was better than the previous plan as there were only a few houses. Ms. Safford wondered about the house numbering and that she didn't want to have any future development causing the driveway to evolve into a road. Brian Stein said the common driveway would be by special permit which would keep it a driveway and that someone would need to return and do a subdivision for a road. Patrick Reffett added that numbers were issued by the Building Department after conferring with the Police and Fire Departments.

Clay Youncy (109 Woodland Meade) said he was president of the Woodland Meade Association and that he had not discussed the project with Michael McNiff nor had their attorney made any decisions on their behalf. Mr. Youncy liked the look of the plan, the open space, and the access for the trail. According to Mr. Youncy, there was one lot that was part of the Woodland Meade group. The lot was legal with frontage. The Woodland Meade covenants were fairly detailed with a building restriction to provide the view easement. Mr. Youncy added that the other non-Woodland Meade houses might impede activity in the area.

Phoebe Cutler (San Francisco) recalled from her childhood at the original Cutler home and indicated that the property was key to accessing the backlands of Hamilton.

Heidi Clark (Porter Lane) wanted the Board to understand that the wetlands on the property were not common, but vernal pools and the diversity of the land surrounding the pools themselves were important. According to Ms. Clark the water did not protect the amphibians themselves as they lived in the uplands, which would be developed. Ms. Clark referred to the vernal pool section of the Conservation By-law regulations and the four sub-basins identified and certified by the State. The surrounding vegetation and trees were vital to the food chain and Ms. Clark was concerned with the road surface runoff. Mr. McNiff responded that he was aware of the pools, which he would keep away from, but that he didn't need to go to the Con Com as there was no significant effect on the habitat as the houses would be kept away from the area.

John Hendrickson (34 Porter Lane) thought the proposal was a better plan and asked about the Conservancy District. Mr. Hendrickson wondered why the applicant was not going to the Con Com. Michael McNiff responded that the Con Com's jurisdiction was only within 100' from the

wetlands. Jim Hankin would be asked for a ruling. In response to Clay Youncy's question regarding the dirt driveway, Mr. McNiff responded that last year, the land court's decision was to deed the driveway to the owner of the subject property. Mr. McNiff said he would leave the road as the church and house had a right to go on it but the house out back would not use the driveway.

Gretel Clark (Bay Road) said the development would be a win/win if the houses could be kept as close to the road and trees kept instead of installing big lawns. Heidi Clark suggested putting the land in a Conservation Restriction. Bob Griffin said the applicant would investigate the potential and that Michael McNiff did not like to cut down trees. Claudia Woods responded that at Mr. McNiff's project on Cutler Road, all the trees were removed. Ms. Woods suggested putting covenants in place to protect the property. Phoebe Cutler recalled the original meadow with blueberry bushes, which grew into trees. Ms. Cutler felt the trees were a degradation.

Jake Kumara (12 Hatfield Road) said he thought that of the five to six plans he had seen for the site, this one was the best one. Bob Griffin noted that he understood a general support for the project by the Board and neighbors.

#### **Board Discussion regarding Zoning By-law Modifications**

The Board discussed the removal of the Conservancy District from the Zoning By-law. Brian Stein assembled an overlay of GIS and a digital copy of the Conservancy District map to show the relationship between the wetlands and the flood zones. The flood zone was most expansion around the wetlands and in most cases, the actual wetlands (wooded marsh and marsh bog) were almost identical, according to Mr. Stein who thought that was most likely how the district was defined. By reviewing the Master Plan when the Conservancy District was proposed, it can be determined that the District noted the protection of the wetlands. The Wetlands Protection Act was passed in the 1970's. It appeared that the Conservation District was larger than the delineated wetlands but the actual delineated wetlands would be slightly different on a tighter more scientifically based scale. Richard Boroff said the Conservancy District went right through the wetlands. Mr. Stein responded that wetlands change over time and it had been 40 years since the Conservancy District was created. Claudia Woods said the District talked about habitat. Rick Mitchell recalled that the zoning consultant (attorney Mark Bobrowski) said it was illegal, Town Counsel said it was unenforceable, and it was replaced by the Wetlands' Protection Act. Mr. Stein stated the legal issue didn't allow for any use in the Conservancy District other than ones that were exempt by statute whereas the Wetlands Protection Act allowed certain uses based on the distance to the resource area.

Heidi Clark (38 Porter Lane) spoke about keeping both as a means to protect the resource, especially uplands associated with vernal pools. Ms. Clark thought it was a very useful tool for habitat protection. Richard Boroff responded that Jim Hankin indicated the Wetlands Protection was greater in area than the Conservancy District. Bill Olson pointed to the methodology of both protection tools. Peter Clark recalled that Bill Bowler had noted one Conservancy District filing

in 20 years. Brian Stein said that clients would not buy land with the Conservancy District restriction on it and that no direction was given to the ZBA for what they could or could not do.

Rick Mitchell made a motion that the Board formally move forward with removing the Conservancy District from the Zoning By-law.

Richard Boroff seconded.

Vote: Majority in favor (4-3) with Peter Clark, Ed Howard, and Claudia Woods voting nay.

Claudia Woods commented that she would distribute questions and possible changes regarding accessory apartments to be discussed after she did research from other towns. Ms. Woods suggested discussing familial requirements, temporary units, definitions, grandfathering, safety, owner occupied, different zoning districts and non-conforming lots. Brian Stein wondered if the Board wanted to pursue allowing easier access to apartment approval. Ms. Woods said there were four options currently and the process could be cleaner. Rick Mitchell requested that Ms. Woods make a recommendation based on other towns' By-laws. Members of the Board discussed the benefit of having more apartments, including creating affordable units by right. Mr. Stein suggested one unit per property as a maximum. Bill Olson suggested taking a step back to look at housing needs and then look at the By-laws. Mr. Stein responded that there was a known need and the By-law needed attention.

Bill Olson would combine Board member notes regarding the Demolition Delay By-law and send them to the Historic District Commission. Ed Howard requested the notes be done promptly as Tom Catalano was meeting with the Selectmen on February 5, 2018. Rick Mitchell and Brian Stein thought the wait time for determination was too long. Tom Catalano reportedly insisted on the one year waiting period before construction could begin if a project was deemed to be worthy of saving under the By-law.

### **Board Discussion regarding Master Plan Update**

The Community Preservation Committee (CPC) accepted the request to sponsor funds (\$30,000) after July 1, 2018 to be used to update the housing component of the Master Plan. Patrick Reffett said the Selectmen were reportedly more supportive of doing a complete overhaul of a Master Plan rather than a component. Members of the Board felt the majority of the Master Plan was on target except the housing element including demographics, census information, and growth population changes, which could be updated. There was some shifting relative to what residents wanted regarding future housing, which could be the focus target. Richard Boroff added that everything revolves around housing. Brian Stein thought the Selectmen just needed a simple explanation. Rick Mitchell indicated that an entire Master Plan would cost two to three times the price of the housing section alone and that the CPC did not have a lot of money currently. A full Master Plan would involve a two year effort at a minimum.

Patrick Reffett would go to the Selectmen with Brian Stein at an upcoming BOS meeting. Janel Curry thought the community needed to talk about housing as one topic and work through the



conversation. A Request for Proposal would be advertised in March with respondents having a month to submit, which would allow time for a decision before Town Meeting (dis)approval and July 1, 2018 when funds would become available.

**Updates from other Boards.**

Ed Howard asked about AirBnB and one day rentals. Board of Health and parking concerns were potential issues. From a community standpoint, Mr. Howard was concerned that renting by the day would attract transient people. Richard Boroff referred to an article in Globe, where the Mayor of Boston was putting together a plan to address AirBnB with three criteria based on length of time and standards met. Claudia Woods recalled that Patrick Reffett had looked at Manchester’s By-law. Mr. Reffett said the Board had a discussion fueled by complaints a few months ago and that the Zoning By-law allowed any residential property to accommodate up to four boarders for any length of time. Mark Bobrowski brought the issue up but the change was a substantive one, which would be reviewed in Phase II. Accommodations would have bathrooms, but not kitchens as kitchens would constitute an apartment. Mr. Reffett wished there was a better level of control. Ms. Woods wanted to be able to regulate AirBnBs as they were different. Janel Curry suggested limiting the number of nights and enforcing an owner occupied residency. Rick Mitchell said MAPC probably had a template. Brian Stein thought they should be taxed.

Bill Olson said the cell tower on Asbury St. was difficult to see from Asbury St. even in winter. Richard Boroff responded that the tower could be seen from Gail Ave. Brian Stein said it could be seen from Canterbrook for a moment. Mr. Olson also thought the Patton Homestead parking lot was unobtrusive.

Varsity Wireless’ president went to the Historic District Commission to present the idea of a cell tower tree (monopine) rather than a cell tower. Patrick Reffett reported that the Commission asked if there were other towers that were close or within Historic Districts and what type of mitigation was possible.

**Other Board Business – Minutes**

Motion made by Rick Mitchell to approve the minutes of January 9, 2017 as amended.

Seconded by Brian Stein.

Vote: Unanimous in favor.

**Adjournment**

Motion to adjourn made by Peter Clark.

Seconded by Rick Mitchell.

Vote: Unanimous to adjourn at 9:25 pm.

Prepared by:

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Marcie Ricker

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Attest

Date