

HAMILTON PLANNING BOARD
MINUTES OF MEETING
February 7, 2017

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

Associate Members Present: Richard Boroff

The meeting was called to order by Claudia Woods at 7:04 pm. in the Memorial Room.

227 Willow St. Public Hearing to Amend Special Permit

Brian Stein read the public hearing notice to amend the special permit. Claudia Woods reviewed that at the meeting of January 17, 2017, a motion was made to request a cease and desist from the Building Inspector. The motion resulted in a favorable vote, but at the time, the Board was mistakenly told that the vote would not hold. Town Counsel later opined that the vote would hold. The Planning Board wrote a letter to the Building Inspector on January 20, 2017, requesting a cease and desist. The Building Inspector declined the request on January 24, 2017. A separate request for a cease and desist was issued by a neighbor on January 24 which was also denied by the Building Commissioner.

Claudia Woods noted that the board had received a letter from the applicant's attorney on February 2, 2017. The letter indicated that the Planning Board intended to reopen the hearing for the CAM project for the purpose to make substantive modifications to the Special Permit. According to the letter, the Planning Board had no legal authority to do so on its own initiative. The letter asserted that the applicant had not sought or consented to any such modification.

Donna Brewer responded that she believed the Board could move forward with the hearing. The recollection of Ms. Brewer was that the applicant did consent to a new hearing and discussing modifications with the Board. Ms. Brewer continued that even if the applicant had not consented to the modifications or hearing, it was the Board's Special Permit and the Board had the authority to go back and change the Special Permit. The problem would be if there were a bonafide purchaser, purchasing the property based on the original permit. Ms. Brewer reiterated that the Board was fully within their rights to go forward and the Board should go forward. Claudia Woods announced that the Board had received letters in opposition to the project from abutters (Peter Gourdeau and Amanda Scott), which were read aloud and accepted as part of the public hearing evidence. Peter Gourdeau's letter indicated that he believed the Board had a responsibility to defend and not accept a solution that deviated materially from the original Special Permit. Ms. Scott's letter supported that of Mr. Gourdeau's letter.

In response to Richard Boroff's question regarding constructive approval, Donna Brewer responded that the Special Permit Decision was not filed with Town Clerk, so it was constructively approved. The Special Permit continued to exist.

Claudia Woods announced that the Planning Board could either appeal the Building Commissioner's decision to the ZBA by February 23, 2017 or pursue modifications of the Willow St. Special Permit. The Board could also do both. Bill Olson and Ed Howard agreed that they were not happy with the design and thought it should be brought to the ZBA. Peter Clark noted that the conditions of the Special Permit were violated as there was never an elevator stop on the roof shown in plans. Mr. Clark agreed that an appeal to the Building Commissioner's decision should occur. Brian Stein agreed that the project violated the Special Permit and it should go to the ZBA but did not want the ZBA to make modifications to the approval.

Donna Brewer said the ZBA could not modify a Planning Board permit but they could only support or over-rule the Building Commissioner's decision to not issue a cease and desist. If the ZBA supported the Building Commissioner's decision to not issue a cease and desist, the responsibility would return to the Planning Board to work on a modification or to leave as it existed through the constructively approved permit. The final option would be to go to court to determine if the Planning Board had standing. Paul Ehrard (Willow St.) asked if the cease and desist would stop all construction to which the response was yes.

Mark Lanza, attorney for the applicant (CAM Holdings), said he stood behind his letter and disagreed with Town Counsel. Mr. Lanza reiterated that the Planning Board could not modify the Special Permit. Mr. Lanza talked about constructive approval and noted that if the Board didn't act, the applicant could claim a constructive grant which had not happened. The applicant had not filed paperwork so the Special Permit that was granted was allowed. According to Mr. Lanza, the ZBA would not have jurisdiction because the time limit had passed. The applicant was present and willing to listen and make changes to the design of the structure but by doing so was not waiving his rights. Donna Brewer said the Planning Board had 30 days to appeal the Building Commissioner's decision to deny the cease and desist to the ZBA.

Claudia Woods said she thought about making a resolution that the Town and Board could be happy with but didn't see any recourse other than sending an appeal to the ZBA. Bill Olson noted that the only modification could be to talk about overhangs and aesthetics. Brian Stein asked Donna Brewer if the ZBA didn't enforce the cease and desist, could someone else appeal that decision to the court, to which Ms. Brewer responded that an aggrieved party could appeal, such as a direct abutter.

Mike Pallazola (CAM Holdings) said the discussion had been to try to come up with a solution for the structure that was built. Mr. Pallazola requested that the Board look at the drawings and vote, allowing the elevator shaft to stay with modification made to the surrounding structure. Mr. Pallazola read from the MA Building Code, which indicated that bathrooms and halls were not habitable space. The Zoning By-law allowed for mechanical structures to be built on the roof, as they were not habitable space.

Mike Pallazola presented architectural drawings showing façade elevations and roof elevations of what was initially designed for the roof. The roof structure, which was 18' x 18' x 15'5" (high) was brought down as low as possible, according to Mr. Pallazola. The drawings were not specific about where the elevator was going according to Mr. Pallazola but, according to Mr. Pallazola, they were always going to the roof, especially referring to the stairway. Brian Stein recalled the latest approved plan had an interior courtyard on the third floor which was open to the roof with a circular stairway. Mr. Pallazola disagreed and said it was a discussion plan but not the final set. Mr. Pallazola said the stairwell structure was a minimum of 10'. Claudia Woods responded that the Board looked at modification to fix the mass of the visual façade.

Carl Swenson offered his concern about the Board setting precedent in the overlay district. Mr. Swenson was concerned that Hamilton would start to look like Beverly. Mr. Swenson referred to Mike's Auto, which was a ZBA decision. Martha Driscoll stated that if the drawings that the Planning Board approved were not what was constructed, the Board had no option but to appeal to the ZBA.

Donna Brewer discussed the court pathway where the court would or would not agree that the Special Permit was violated. If they agreed, the court would issue a remedy which would likely not include having the building torn down. The court would be looking at a remedy that would balance the interest of the owner and the Town. Ms. Brewer said there was a chance that the Town could spend money for court and still not be any further down the road. Ms. Brewer added that it was absolutely appropriate if the Board wanted to go to court to seek whatever remedy the Board thought was best, but the Board should be willing to accept that the court may not agree. Claudia Woods said the Town trusted the Planning Board to make a good decision and it felt like the Board would be remiss to the citizenship if they just tried to make it look a little better.

Bill Dery (Chebacco Road) reminded the Board that they didn't report to any town official, but only the people. Mr. Dery, who thought it was a clear violation, stated that if the Board didn't go through the litigious route and this structure stayed at 57', then the Board would be doing a disservice to the Town. Mr. Dery said that if that structure stayed at 57', another developer would just threaten the Town and the Town would cave. Kate Landcross, (Ricker Circle) said the building should not affect the Town.

Peter Clark said the issue was that there was a Special Permit issued with a certain set of drawings and the plan did not include a roof drawing with anything on it. Mr. Clark said it was very wrong to set precedent to issue a Special Permit and have it built with a separate set of drawings given to the Building Commissioner. The applicant should have returned to the Board to see if they would approve another stop on the roof. Mike Pallazola suggested that in the future, the protocol may be to have an applicant return to the Planning Board with the construction drawings.

Motion made by Bill Olson to close the public hearing at 227 Willow St.

Seconded by Brian Stein.

Vote: Unanimous to close the hearing.

Motion made by Peter Clark to appeal to the ZBA, the Building Commissioner's denial to issue a cease and desist as requested on January 20, 2017.

Seconded by Peter Clark.

Vote: Unanimous to appeal.

Zoning By-law Changes

The WSOD did not have Rules and Regulations. The Board discussed taking the Rules and Regulations from another section of the By-law and modify them as well as include specific requirements in the plans to be submitted, including showing the structure. The Board agreed that once a project was approved, the applicant would return to the Planning Board with construction documents to obtain a Building Permit for Special Permits.

Cottage Housing. Bill Olson referred to the town-wide survey which indicated that 67% voted for cottage housing. Key elements of cottage housing included detached semi private homes that were smaller, clustered around open space, serving seniors, empty nesters, or first time home buyers. Claudia Woods and Brian Stein agreed that cars would be to the rear of the homes with the front focused on shared open space.

The Board discussed bedrooms, unit size, cost, location, relief from setback requirements, and design standards of the single family cottage style homes. Shawn Farrell suggested using downtown Hamilton as a prototype of eight houses on an acre of land. Mr. Farrell suggested the number of units to be built within a year and the distance between developments be considered.

Bill Dery (Chebacco Road), offered his concern about the density of Hamilton and the threat to changing it. Claudia Woods considered having districts and noted the adorable cottages of Asbury Grove. Shawn Farrell realized that some residents were worried about changing the character of the Town. Ed Howard loved the concept and focused on the builder's ability to make a profit with regulatory inhibitors compared to building a conventional subdivision. Brian Stein announced that some builders were building smaller with energy efficient homes. Claudia Woods talked about varying the size of the cottages.

Jackie Hodge (Cutler Road) referred to the Town survey and the need for lower cost housing noting that if the price point could not be lower, people may be unhappy in the end. Brian Stein discussed the need for residents to come to Town when they were younger and stay throughout their lives by figuring out a way to get a range of housing types into the town.

Peter Clark was concerned about having open space gobbled up. The Board discussed the difference and potential results of Cottage Housing versus Cluster Zoning. Jackie Hodge noted that the Town was known for its open space. Mr. Clark discussed the OSFPD and that it didn't

work because it required a yield plan first. Brian Stein who thought a yield plan was common, thought the problem was about density and restriction. Mr. Stein wondered about having multiple types of housing on one property. The Board decided to work on the Great Estates By-law (Peter Clark), the Cluster By-law (Brian Stein), and Cottage Housing (Bill Olson).

Annual Report. Ed Howard would write a paragraph regarding his discontent that the Planner worked for the Town Manager.

650 Asbury St. Parking Lot Site Plan Review

Brian Stein made motion to continue the hearing for 650 Asbury St. until the next meeting.

Seconded by Bill Olson

Vote: Unanimous to continue

Zoning By-law Change - Wetlands

Reportedly Ann Gero was proposing to have the sentence that was removed, reinstated. Claudia Woods would ask Mark Bobrowski his opinion.

Planning Board Member Appointments. The Board discussed the appointment, which would last until April.

Peter Clark made motion to appoint Richard Boroff as a full member until April.

Brian Stein seconded.

The Board of Selectmen would also need to vote to approve the appointment.

Vote: Unanimous to approve.

Minutes

Motion to approve the December 6, 2016 minutes with spelling correction made by Brian Stein.

Seconded by Bill Olson

Vote: Unanimous to approve.

Motion to approve the December 20, 2016 minutes with minor changes made by Brian Stein.

Seconded by Bill Olson.

Vote: Unanimous to approve.

Motion to adjourn made by Brian Stein.

Seconded by Bill Olson.

Vote Unanimous to adjourn at 9:58 pm.

Prepared by:

Marcie Ricker

Attest

Date