

HAMILTON PLANNING BOARD
MINUTES OF MEETING
Zoom Meeting ID: 824 6381 3237
Passcode: 745144
Hybrid with Members in the
Memorial Room
Hamilton Town Hall
December 7, 2021

Members Present: Corey Beaulieu, Richard Boroff, Marnie Crouch, Emil Dahlquist, Rick Mitchell (Chair), Jonathan Poore, William Wheaton, and Pat Norton (Associate).
Planning Director: Patrick Reffett and Ray Brunet (Fire Chief)

This meeting was called to order by Rick Mitchell at 7:00 pm with a quorum established.

SENIOR HOUSING SPECIAL PERMIT PUBLIC HEARINGS 133 ESSEX ST - CONTINUED Chebacco Hill Capital Partners LLC (1) Senior Housing Special Permit to develop the Property as a fifty (50) unit age-restricted condominium development; and (2) to obtain a Stormwater Management Permit. The meeting was an internal meeting with no public or applicant participation. Specific issues, such as blasting, hydrology, and stormwater management with respect to the project were not discussed.

Patrick Reffett announced that Tata & Howard, a subcontractor engaged by TEC, Inc. to review, among other things, septic design plans, general water main extension design, and water demand analysis, withdrew from participating in the peer review process, although one peer review report had been received from the entity. According to Patrick Reffett, a search for another team to continue the work has commenced. Mr. Reffett stated future meetings would focus on traffic, parking, and other site design items.

Rick Mitchell said the Town Clerk had reported that she had received a Mullen Report from Pat Norton with respect to his absence from the November 9th meeting. Mr. Norton in his report attested to having reviewed the minutes and the meeting on tape. Accordingly, Mr. Norton is eligible to vote if needed.

Facebook Posting

Mr. Mitchell noted that he had received a letter from Deborah Eliason, Counsel for Save Chebacco Trails and Watershed, regarding a Facebook post made by Richard Boroff. The applicant's attorney and Town Counsel were both aware of the situation. Town Counsel had advised the Board to discuss the topic for the public record. Attorney Eliason had asserted that Mr. Boroff had posted inaccurate information regarding the Special Permit process. Mr. Mitchell stated that Mr. Boroff described the process of a Site Plan Review instead of the

requirements for a Special Permit. Attorney Eliason requested that Mr. Boroff recuse himself from the consideration of the Special Permit, but Town Counsel responded that recusal was not appropriate or needed as Mr. Boroff did not post any particular opinion about the project.

Mr. Boroff read the Facebook post into the record (attached). Mr. Mitchell suggested that members not use social media to make comments about the process, people, or any aspect of the proposal. Marnie Crouch had reviewed the social media policy on the Select Board's webpage. The policy indicated that once an error was committed, steps needed to be taken to correct the error.

The Rules and Regulations of the Planning Board indicate that the Chairman is the spokesperson for the Board. Members may use social media but had to specifically indicate that they were not speaking for the Board or in an official capacity, but rather were expressing their own personal thoughts, ideas, and opinions. Mr. Mitchell noted that commenting on matters related to issues before the Board could jeopardize its credibility. The last sentence of Mr. Boroff's post indicated that he did not offer his own thoughts on the topic, but rather his beliefs about the rules for special permits. Mr. Mitchell stated that he did not think that Mr. Boroff's confusion regarding Site Plan and the issuance of a special Permit required recusal. Ms. Crouch suggested that Mr. Boroff make a supplemental comment on Facebook noting his confusion. Mr. Boroff agreed to post a statement recognizing his error. Both statements would be placed into the record.

Blasting Information

Ray Brunet (Hamilton Fire Chief) was present to summarize the process of obtaining a blasting permit. Chief Brunet has been involved with many blasting permits in his 32 years on the force. Chief Brunet said blasting permits were common in Hamilton and were obtained for septic systems, foundations, pools, and a gymnasium. He noted that the Pingree School had blasted two acres of land for one and one-half month and that Peter Britton had blasted land for his compost facility. According to Chief Brunet, the applicant must file a so-called FP6 form pursuant to which the blasting company certifies that it would handle the transport of blasting materials to the magazine site, and it also would submit the user explosive certificate and blasting license. A dig safe number and blasting plan also are required.

According to Chief Ray Brunet, all sites within 250' of the property line would be eligible to be surveyed before blasting and that the pre-blast survey is used as evidence in the event damage occurs in the blasting process. A complaint would be filed (Form 296) if a crack occurred or was worsened by the blasting. A vibration seismograph would record blast vibrations, which had to be less than 133 decibels. Regulations outline what day and hours blasting can occur (7:00 am to 7:00 pm), but those hours could be reduced by the Board. The type of rock, volume of material, and direction of blast would be reported, although changes can be permitted as the blasting progresses. A Memorandum of Understanding would be signed by the blaster, the developer, and the Fire Department. A police detail would be needed on site any time blasting occurred or

when explosive materials arrived on scene until the time in which the materials were removed from the site. It usually takes ten days to review licenses and obtain a permit. The Fire Department's Blasting Procedures, effective December 6, 2021, track the Massachusetts regulations set forth in the code of Massachusetts Regulations, 527 CMR 1.00.

The Fire Department would oversee the safety of the job. Seismographic evidence, videos, and photos would be logged every time a blast occurred and submitted to the Fire Department within 24 hours. The Fire Department would contact the Department of Fire Services in the event of problems.

Chief Brunet said the blasting process had been refined over the years, was stringently regulated, and very professional. Chief Brunet added that people do not realize that blasting is taking place because they do not see it. Recently, the Town blasted for weeks to lay the water line on Chebacco Road. Other blasting sites included one on Villa Road and one on Chebacco Road. Chief Brunet said anyone more than 250' from the blast area would not feel the blasts and that fly rock had not been a problem. No complaints had been filed in any blasting occurrence within the Town.

If a complaint were to be filed, the Code Enforcement Bureau would come out within hours. The blasting company would hire a third party to do surveys on nearby properties. The Planning Board must approve a Special Permit for the project before a blasting permit can be issued. Chief Brunet agreed to return to the Board after he reviewed the application and offer insight. Chief Brunet said he did not handle the technical aspects of the blasting focusing instead on the safety of what was going on around the site.

By-law checklist

Mr. Reffett had distributed a checklist to members with his tabulation from the last meeting for members' review. Members wanted to discuss which Bylaws sections required the submission of more information or whether there were questions with respect to satisfaction of applicable bylaw sections. Members discussed the prefatory or introductory language of Section 8.2.12 ("A proposal must comply with all other applicable Town Bylaws, and the applicable rules, regulations, and requirements of all departments, boards, and commissions, including the special sensitivities of the Historic District and Groundwater Protection Overlay District") and agreed that more information was needed for General Compliance. Members also discussed whether the GPOD was applicable as the existing lot had been divided into two lots (approximately six acres and 58 acres) to avoid application of Section 9.1.5 (Any lot, which has one-third (1/3) or more of the total area falling into the GPOD must meet all the requirements of the GPOD.") meaning that the Special Permit would be within the purview of the Planning Board and all requirements of the GPOD would not need to be satisfied as would be the case were the project to be governed by the GPOD.

Members questioned whether Section 8.2.22, regarding setbacks and landscape buffers, had been satisfied. Internal landscaping had been provided, but there were questions regarding the buffering of the project from Route 22 and Chebacco Road. Bill Wheaton questioned the removal of the spruce forest and whether existing woods would remain or be cut down. He stated his view that the setbacks and buffers along Chebacco Road were inadequate. Members agreed that more information would be needed about landscape and buffers, specifically along the perimeter of the property, and especially along Chebacco Road.

Members had questions about Section 8.2.13, General Requirements specifically 8.2.13.1, 2, and 7 and agreed that more information was needed.

Members agreed that Section 8.2.15 had been satisfied.

While 8.2.12.3 regarding a local preference had been addressed by the applicant, members wanted more information about how it would be executed.

Members discussed Section 8.2.16, Building and Design Standards, requiring that a development reflect “the residential character of the neighborhood.” Section 8.2.16 references both the character of the neighborhood in its introductory language and the character of the Town in subsection 8.2.16.2. Members had questions about whether the section’s introductory language had been addressed and agreed more information was need about Section 8.2.16.6 as well. Mr. Wheaton suggested a subjective discussion to avoid a yes or a no to the project, but changes to the project that would make it a yes, not a no. Mr. Mitchell indicated he hoped to narrow the issues to permit discussion of subjective issues that would invoke the exercise of the Board’s discretion. Mr. Reffett observed that the Board should question the applicant about its motivation in designing structures, whether in relation to the neighborhood, the community or whether the design was simply “off the shelf.”

Members noted that Section 8.2.21, Parking, had not yet been reviewed so more information was needed.

With respect to Section 8.2.25.2 regarding the Senior Housing Special Permit Application Process when an application contains an open space element, members discussed the term “conservation areas” in Section 8.1.12.1, which is made applicable to the project by Section 8.2.25.2. Mr. Reffett noted that a former bylaw identified as Section 9.3, “Conservancy District,” was deleted by a vote at a Special Town Meeting in 2018 because the bylaw was deemed to be unenforceable and its protections were available through other existing bylaws. Jonathan Poore observed that the term “conservation areas” is used in the Stormwater Management Handbook as well as in erosion control materials available through the Commonwealth and the language in those publications parallels the language of Section 8.1.12. Ms. Crouch observed that the repeal of the Conservancy District bylaw would have no effect on existing bylaws. Emil Dahlquist asserted that conservation areas have two components: a regulated component, such as wetlands

and flood plains; and an unregulated component, such as natural features, steep slopes and stone walls, which need to be identified on a plan. Mr. Mitchell suggested that Section 8.2.25.2 was satisfied. Mr. Dahlquist explained that, although the applicant had provided contour plans, those contour plans failed to clearly delineate natural features such as steep slopes. Mr. Reffett stated that the applicant had not yet presented its Stormwater Management plan and that the Board was arriving at a conclusion before the information was presented. Mr. Boroff questioned the need for more than contour lines. Mr. Poore countered that the Special Design Process set forth in Section 8.1.12.1 was actually the industry standard and the first step in the design process and formulation of a stormwater management plan, adding that compliance with Section 8.1.12.1 is where the discussion and review starts. He added that that step, while primarily a labeling exercise, had been missed. Mr. Wheaton reiterated his earlier point that he wished to see the spruce forest delineated so that he could ascertain what trees would be removed and what trees would remain. Mr. Poore referenced Section 8.1.12.1 and 8.1.12.2 and stated that he wanted the information set forth in those subsections of the Open Space and Farmland Preservation Development Bylaw, which includes the delineation of steep slopes. Mr. Mitchell expressed concern that standards not set forth in the bylaw would lead to the conclusion that the board was predisposed to disapprove the project. Ms. Crouch and Cory Beaulieu suggested that the requested information was within the scope of the bylaws and should lead to a collaborative process, a point Mr. Poore indicated was specifically set forth in the Storm Water Management Handbook and regulations issued by the Commonwealth. Mr. Poore spoke to the issue of steep slopes, noting that are defined between 15% and 25%, adding the Massachusetts Department of Environmental Protection defines steep slopes at 18%. Mr. Reffett confirmed that Section 8.2.25.2 remained an open question.

Ms. Crouch wanted more information pertinent to Section 8.2.32, Expansion, specifically that the provisions of that section be referenced in the condo documents as the Board should not be satisfied just issuing a condition of the permit. Mr. Reffett explained that expansion would not be possible unless the Special Permit were to be modified and the item should be deemed satisfied. More information was needed for Section 8.2.33, Annual Reporting.

The Purposes set forth in Section 8.2.1 would be held until the end of the Special Permit process.

Two pre-application conferences had been held, so the Section 8.1.7 was satisfied, but members said the identification of conservation areas had not been delineated in accordance with Section 8.2.25.2 and Section 8.1.12.1, 2, 3, and 4 required more information and there were questions about whether these sections of the bylaws had been satisfied. Mr. Wheaton indicated that the items set forth in Section 8.1.12 required a discussion, particularly a discussion of potential changes. Mr. Wheaton wished to ascertain the location of woodlands to ascertain how the project fit within the neighborhood with the idea of making the project invisible to residents on Chebacco Road. Mr. Mitchell said the duty of the Board was to clearly communicate what specific questions needed to be answered by the applicant. Mr. Dahlquist indicated that the Board needed to follow the process to identify where the problems may be and to ascertain

whether the project meets the standards of the bylaws. Ms. Crouch read the provisions of Section 8.1.12.1 and indicated that what was set forth in that section of the OSFPD was what was required. Members then discussed the measure for steep slopes and agreed that 18% was appropriate.

Themes of Discussion

The themes that emerged from consideration of the Checklist were circulated for discussion. Mr. Reffett recommended the applicant provide a Construction Management Plan with definitive descriptions for each phase. Mr. Reffett indicated that at the next meeting traffic and parking would be discussed, but Mr. Poore reiterated that the next step in the process is to discuss themes. By discussing themes now, the Board would avoid deciding, for example, that the project did not fit in the natural environment at a future public hearing.

Ms. Crouch stated that once the Board had the plan required by Section 8.1.12.1 that it, in conjunction with the existing plans, could foster a collaborative discussion about the project. Mr. Poore indicated that the purposes of the discussion of themes was to inform and focus the discussion of remaining technical topics subject to peer review. Once the Board had the benefit of plans showing existing slopes and woodland to juxtapose against those showing the site after development the themes would provide context. Once information had been obtained from the applicant, the project would go through a technical review. Mr. Wheaton agreed that discussion of themes would foster discussion, and Mr. Reffett suggested requesting a Construction Management Plan. With that information, the Board would determine, among other things, how the project fit with the natural environment and neighborhood. Mr. Poore emphasized that internal discussion of themes would be helpful before consideration of more technical aspects of this project. Mr. Wheaton agreed, adding that a broader view of the project would be helpful, especially with before and after information in hand. Mr. Mitchell argued that it was unfair to the applicant to prejudge the project before the applicant has had the opportunity to produce the plan required by Section 8.1.12. Mr. Wheaton suggested that a less burdensome approach would be to point out issues earlier rather than later in the process so the applicant could address those issues. Members agreed with this approach, with Mr. Poore emphasizing following the need to follow the process set forth in Section 8.1.12.1 and 2 before considering technical aspects of the project involving peer review.

The applicant would be asked to address 8.1.12.1 and delineate slopes at 18%. Section 8.1.12.1 would allow the Board to develop a before and after picture of the site in terms of topography, trees, and foliage. A 3D model had been requested previously. Mr. Reffett noted that it was not the Board's responsibility to design the project for the applicant, a statement that garnered support among members. Mr. Wheaton summarized noting it would be helpful to have a before and after plan regarding topography trees, and foliage and to have the project designer present to understand the impulse in designing of the project. Mr. Wheaton noted it was a difficult site for the project and discussion of larger concepts is warranted.

Members agreed that the list of topics for the next meeting should include the applicant's submissions pursuant to Section 8.1.12.1 with slopes delineated at 18%, together with delineation of how much vegetation would be removed and how much would remain. Mr. Poore requested that the applicant provide a 100' to 1" scaled plan of the entire site, just like the applicant's Existing Conditions Plan, for the materials to be submitted pursuant to Section 8.1.12.1. In addition, the Board could consider a presentation from the architectural designer about the proposal for site. It was agreed that all of the above needed to be discussed before the Board could proceed with a discussion of traffic and parking.

Attorney Jill Mann would be invited to the December 21, 2021 meeting.

BOARD BUSINESS

Motion made by Bill Wheaton to approve the meeting minutes of November 16, 2021 as amended.

Seconded by Richard Boroff.

Unanimous in favor.

The minutes from the November 9, 2021 minutes would be voted at a future meeting.

Mr. Dahlquist updated the Board regarding the Master Plan Workshop.

Mr. Reffett said the Town received the Project Eligibility Letter for the proposed Ch. 40B development at 421 Asbury St. The application would likely be received in late January. The applicant intends to develop 45 units of low- and moderate-income rental housing.

Documents Considered

Pat Norton Mullen Report.

Richard Boroff's Facebook post dated November 29, 2021.

Attorney Eliason letter regarding Richard Boroff's Facebook post.

Bylaw Checklist.

Reference sheet about slopes.

Themes for discussion as written by Jonathan Poore.

Adjournment.

Motion made by Marnie Crouch to adjourn at 9:55 pm.

Seconded by Richard Boroff.

Unanimous in favor.

Respectfully submitted as approved at the meeting of 12 21 2021 by Marnie Crouch.

P. Reffett /mf