

MEETING MINUTES

DRAFT
HAMILTON ZONING BOARD OF APPEALS
MINUTES OF MEETING
August 3, 2022
7:00 (7:15) p.m.
Hybrid Zoom Meeting ID 836 6531 670
Passcode 594674
Hamilton Town Hall
577 Bay Road, Hamilton, MA

Members Present: Bill Bowler (Chairman), Steven Derocher (Associate), Bruce Gingrich, and Andie Philip (Associate).

Others Present: As noted in the meeting.

This meeting was called to order at 7:15 pm with a quorum established. Town Counsel opined that the Zoom meeting was being shared with the Conservation Commission and asked that the ZBA recess their meeting until the Conservation Commission had concluded, which caused the meeting to be called to order at 7:15 rather than 7:00 pm. Applicants noted that they found the delayed meeting time was acceptable.

PUBLIC HEARINGS:

Variance and Extension or Alternation of a Non-Conforming Use, Structure, or Lot to construct a two story garage. 135 Lake Shore Ave. Travis James owner.

Bill Nolan (architect) was present to explain the project and plan. The existing house had one egress that met code. The garage would include an interior bulkhead to provide a secondary egress. The side set back variance was needed to allow for a connection to the existing house. A stair to the unit above was needed to access the open storage area. The proposed plan featured a 9.1' set back at the closest point where 15' was required. The building coverage requirement was 25%. Currently the home had 21% and 30% was proposed. The hardship was the size of the lot as zoning had based the requirement on a 20,000 sf lot.

One door was proposed despite two doors on the elevation. There were no plans for an apartment. Bill Bowler opined that under the Brookline case, the applicant did not need a variance but rather an extension of a non-conforming use when the applicant was requesting an increase in a non-conformity for a home that was already a non-conforming single or two family home. Attorney Bowler said the ZBA could approve the permit as an extension of a non-conforming use/structure.

Jim Spilliotti (abutter) was concerned about the lake and the septic system. Members discussed that the Building Inspector and other Boards would need to approve various aspects of the project.

Jean Fucillo (abutter) was concerned about the size of the house and how it might affect her lot. Ms. Fucillo said the septic plan was not attached to the Title 5 report. Bill Bowler explained that the Board of Health would approve the septic system. Paul Fucillo wanted to see plot lines. Travis James responded that the septic system passed Title 5 for the current structure but once he knew what the addition would be, the design engineer would design enough space for the septic. Donahue had conducted a survey in the past.

Members discussed that conditions might include the approval of other boards and the Building Commissioners confirming the distances to the lot line as shown.

Motion made by Andie Philip to grant the extension of a non-conforming use/structure with the condition that the Building Commissioner confirm the setback distances prior to issuing a building permit.

Bruce Gingrich seconded.

Vote: Unanimous in favor.

Continuation of Public Hearing. 466 Highland St. Property owned by the Britton Family Trust. Application by Harborlight Community Partners. Application for a Comprehensive Permit to construct 45 units of multifamily housing.

Bill Bowler noted that the applicant filed an amended list of requested waivers to include multifamily use in a R1a district, reduced lot area per dwelling unit (40,000 sf required), and impervious surface requirements for the Groundwater Protection Overlay District (15% maximum or 2,500 sf maximum, whichever is greater required, which could be exceeded by special permit).

Traffic was discussed. It was noted that the applicant had submitted a traffic study, which was peer reviewed. The study and response were on the website. Rebecca Brown (traffic engineer) was present via Zoom. Ms. Brown discussed the site driveway access point with Asbury St., the intersection of Canterbrook Village Lane and Asbury St., and the intersection of Asbury St. and Highland St. The peer reviewer reportedly agreed that the study area was appropriate. Traffic counts were collected in January during morning and evening hours but were adjusted (5% increase) for seasonal variation. Post Covid calculations were increased 10% to reflect pre-Covid conditions. Afternoon counts were 4% lower, so they were also increased. A 1% growth increase was also considered over a ten year period. Not all Canterbrook units were occupied during the count, so the number was increased to reflect full occupancy.

Based on the Institute of Traffic Engineers (ITE) trip generation data for multifamily housing, the development would increase traffic by 168 (84 vehicles coming and going) vehicles per day. According to Rebecca Brown, 20% of the vehicles would go west on Asbury St., 35% would go north Highland St., and 45% would go south on Highland St. The traffic study determined there were no safety issues with collisions as there had only been 1.2 accidents per year at the three study intersections. Ms. Brown said the intersections would have B level of service, except for Asbury St. and Highland St. would have an F level service under build or no build conditions.

The peer review consultant agreed that the additional traffic would not have an impact to the intersection and that the delays and impacts were conservative estimates.

While the collision history was discussed, it was noted that a safety concern at the intersection of Asbury and Highland was due to the small island, which caused cars to turn on the wrong side of the island into on-coming traffic. It was recommended that the island be removed and the intersection reconstructed to create a closer to 90 degree angle. The stop line should also be extended to clarify that traffic was to enter on the other side of the island. Site lines were shown and it was noted that they exceeded recommendations if one tree was removed. A secondary access for emergency use was being considered.

Stephan Zates (peer reviewer) concurred that the study area and traffic volumes were accurate. Mr. Zates said he inspected and observed morning and afternoon traffic on a Wednesday. Mr. Zates also reviewed the crash summary, which he said was below district and statewide averages. Mr. Zates recommended the realignment of the Asbury/Highland St. intersection to limit confusion, increase safety, and introduce sidewalks to connect to town. George Pucci (Town Council) opined that infrastructure could reasonably be related to the project and ordered as a condition. The Public Safety Department had sent an email agreeing with the conclusions of the reports. The egress would be further reviewed by the Fire and Public Safety Departments.

Andrew DeFranza was present and announced that there would be 90 total bedrooms in the development.

Dan Hill (Attorney for Canterbrook) was present to discuss the difference between basing trip generation on parking spaces versus number of units and the effect of having ride sharing trips as well. Rebecca Brown responded that the trip generation had been based on the number of units, which was defined in the ITE manual. Attorney Hill questioned the category of uses and distinction between being close to transit or not. Ms. Brown said the study considered the development not to be close to transit and that the By-law only required one parking space per unit while ITE statistics for parking many indicated apartment building units should have 1.7 parking spaces per unit, which would increase parking spaces to 75. Parking had not been reviewed as it met zoning requirements. Attorney Hill thought the Board should be concerned about adequate parking.

Dan Hill questioned how site distances were calculated. Rebecca Brown explained how the ASHTO site distance book had determined an 85 percentile speed collected for stopping site distance, which was used. The intersection was calculated at 35 mph. Attorney Hill said if 43 mph was used, the site line would be 380' but the applicant was only providing 340', which he said was not adequate if using the 85 percentile speed. Ms. Brown responded that 343' would meet the requirements and the greater distance could be achieved by removing more trees, which the applicant did not want to do in an effort to maintain the character of the roadway and increase buffering. Someone traveling faster than 35 mph would need to slow down if a vehicle pulled out. The Board requested that the applicant provide a diagram showing where

the site lines were on the ground and what would need to be removed to achieve the greater distance. Ms. Brown agreed to the request.

Dan Hill noted that the project proposed 28% impervious surface and the waiver request did not prove the project would comply with performance standards. Attorney Hill noted the large septic system and the volume of water into the ground on a daily basis. Even though water would be treated, Attorney Hill said nitrogen and pollutants would still enter the groundwater. Attorney Hill requested a hydrological analysis and mounding analysis be provided to evaluate the impacts of the system. Private wells, a Zone II Municipal well, and the Ipswich River Watershed would need to be protected. Bill Bowler would discuss a complete review with the Planning Director.

Jack Lawrence (105 Rock Maple Ave) was concerned about adding 90 units on a small country road and wondered about the size of the water pipes in the neighborhood with four new projects being added in the last few years. If water pipes were insufficient, Mr. Lawrence wondered who would be responsible to renovate the water supply.

Ellen Rothman (Canterbrook Lane) asked if the Board would consider what was best for the town. Ms. Rothman noted that other proposed affordable housing proposals would meet the affordable housing goals of the Town. Bill Bowler explained that under the By laws, the Board could consider the application before them and that they could only consider circumstances within the limits of the law.

Kathleen Ingeme (14 Canterbrook Lane) added that the Habitat for Humanity development was being built in the neighborhood and asked if the additional traffic from the development had been considered as part of the traffic study. Bill Bowler responded that it was assumed that the 1% growth estimates would have covered the additional trips by the development.

Motion made by Bruce Gingrich to continue the hearing until September 7, 2022 at 7:00 pm at which time the Board would be discussing water and sewer issues.

Andie Philip seconded.

Vote: Unanimous in favor.

Variance. 130 Essex St. Property owned by Gordon Conwell Theological Seminary Theological Seminary. Applicant is Harborlight Community Partners. Lot area requirements /Findings of Fact for Change of Use from student housing to multifamily housing to construct three additions to the existing multi-family dwellings which have been historically used for student housing.

Bill Bowler announced that Bruce Gingrich, Andie Philip and Attorney Bowler would be voting during the hearing this evening. David Perinchief was not present but would watch the video of the hearing. All attending members had previously attended previous meetings.

Andrew DeFranza (Harborlight) announced Harborlight had site control of six residential buildings on campus (Buildings A through F). The application was to convert from one non-

conforming use to another. The existing buildings had studio to three bedroom family apartments (210 in total) and were not dormitories. Mr. DeFranza said he was seeking a permit at 25% affordability for the Subsidized Housing Inventory (SHI). Mr. DeFranza's intention was to finance the buildings with federal tax credits and then finance 100% as affordable with an income cap of 60% of the median income (\$84,000) with a subset at 30% of the median income (\$42,000). Mr. DeFranza said all the units would be physically affordable. Mr. DeFranza said Harborlight intended on acquiring two buildings at a time and finance them incrementally. Gordon Conwell kept an option to retain Buildings E and F. Mr. DeFranza said a non-refundable deposit was due in the end of September and he hoped to get an understanding of how the Board felt about the proposal before he purchased the option. Mr. DeFranza said Gordon Conwell probably would not execute their option to retain Buildings E and F but did not know the future plan of the school. Mr. DeFranza said the development would pay taxes based on the valuation of affordable housing. Mr. DeFranza said Harborlight had multiple projects with one having been finished the previous week and the Wenham project would start later this year.

Robin Stein (Town Council) noted there were two reliefs being sought. The timeline for the Finding did not have a specific deadline but the Variance required the Board to vote a Decision within 100 days of the filing, which was June 6, 2022. Attorney Stein recommended extending the time to act on the issue. Miranda Seimasko (Attorney for Harborlight) said the applicant might be willing to extend as long as they felt progress along the permitting path was viable. Attorney Seimasko noted the representatives from the seminary were present on Zoom.

Rick Mitchell (36 Rock Maple Ave) was present and stated that previously 25% were proposed to be affordable but the current proposal was to have all 210 units be affordable, which was a dramatic change causing dramatic impacts on the population of the town. Mr. Mitchell recalled that he had met with Scott Sunquist (Gordon Conwell) to discuss the lack of clarity as Gordon Conwell planned its exit from the property. Mr. Sunquist reportedly formed a committee to meet with the town to plan. Mr. Mitchell was concerned that a decision was being made in isolation of other information as 210 units was a massive project. Mr. Mitchell thought the presentation lacked clarity regarding financing, timing, and implications in infrastructure of the existing campus. Mr. Mitchell and Shawn Farrell had started meeting with potential consultants to do strategic planning for the entire campus to include affordable housing, commercial-mixed use, and the \$1M feasibility study for the elementary schools. Mr. Mitchell hoped the seminary would pay 50% of the cost for consulting to determine the highest and best use of the property for the seminary and the Town of Hamilton.

John Despic (195 Woodbury St.) was present to announce that the neighbors were angry at the total lack of clarity and sincerity. Mr. Despic asked if Gordon Conwell intended on paying back the money owed to the Town.

Valerie Peck (37 Miles River Road) was present to offer her concern. Bill Bowler responded that the applicant had complied with the law when the original non-conformity was approved.

Robin Stein said she would look at cases before the next meeting to determine how far into the scope the review could be before applying the finding and variance standards to the application.

Jack Fumara (139 Essex St.) was present to state the original apartments were formed under a variance and special permit and now this would be another variance on top of the first. Mr. Fumara thought no hardship had been proven. Bill Bowler responded that he was aware of Mr. Thompson's letter but thought Mr. Thompson might have incorrectly interpreted the law applied in 1975. The ZBA granted approval in 1975 and the seminary promised to make payments, which was not a condition of the Decision. Under the Dover Amendment, Gordon Conwell had the right to be exempt from Zoning. Mr. Fumara said the variance may not have applied to Gordon Conwell but did apply to Harborlight and wondered how the Dover Amendment applied or was in violation when pieces were being carved off.

Rick Mitchell suggested that Harborlight could extend their timeframe and agree to discussions with the Planning Board, ZBA, and Select Board.

John Schoch (175 Woodbury St.) was present to inform the Board that the abutters will have to live with this and that the piecemeal planning affected more than just the Town and Schools.

Myron Walter (attorney for Gordon Conwell and resident at Veranda Circle) and Ken Barns (project manager) were present. Attorney Walter stated the buildings had existed for 40 years and had been heavily used. Attorney Walter said the Town approached the seminary in February about rezoning the campus. Attorney Walter thought the project was mutually beneficial to the Town and the seminary as it was not a single family use. The sale to Harborlight would allow Gordon Conwell time to work with the Town on the remainder of the parcel but they did not have the financial ability to do it without the sale. Attorney Walters encouraged the Board to stay within the parameters and not be involved in master planning.

Jack Lawrence said the Town was engaged in master planning but had little information regarding the intention of the seminary. Mr. Lawrence said the uncertainties made it difficult for the Town to move forward. Mr. Lawrence said he would like to see a business plan with rental incomes.

Clark Sanford (137 Essex St.) was present. Mr. Sanford asked how many bedrooms were in the 210 units and noted that the affordability had increased from 25% to 100%. Mr. Sanford questioned the revenue difference between the two. Mr. Sanford referred to David Thompson's letter in which he indicated that Gordon Conwell owed millions of dollars. While not a condition of the Decision, the agreement was used as a persuasion of rezoning the site in 1977. Mr. Sanford requested that the Board request an extension as there were too many unanswered questions.

Dave Dushcund (215 Woodbury St.) was present. Mr. Dushcund said he was an abutter to the septic system, which was not up to code. Mr. Dushcund did not think the development was viable until the septic system was fully analyzed.

Bill Bowler said he thought it was fair to the applicant to have a straw vote at the next meeting to give them an indication based on what the Board had learned as to whether or not they would be committed to the project path. Attorney Bowler said they would request an extension at the September meeting.

Motion made by Andie Philip to continue to September 7, 2022 at 7:00 pm. The meeting would be a hybrid in person and Zoom meeting.
Seconded by Bruce Gingrich.
Vote: Unanimous in favor.

REGULAR BUSINESS

Minutes – June 1, 2022 and July 6, 2022

Motion made by Andie Philip to approve the minutes of June 2022 and July 2022.
Seconded by Bruce Gingrich.
Vote: Unanimous of voting members, Bill Bowler and Bruce Gingrich. Andie Philip abstained.

Updates from the Chair

DOCUMENTS REVIEWED

Plan of land/elevations 135 Lake Shore Ave.
Amended list of waivers 466 Highland St.
Traffic Study 466 Highland St.
Traffic Study response by Peer Reviewer 466 Highland St.
Slide show of traffic study discussion. 466 Highland St.
Email from Public Safety regarding Traffic Study and Peer Review. 466 Highland St.
Letter by Dave Thompson regarding Gordon Conwell.

ADJOURNMENT

Motion made by Andie Philip to adjourn at 9:25 pm.
Seconded by Bruce Gingrich.
Vote: Unanimous in favor.

Respectfully submitted as approved at the _____ meeting.

Bill Bowler

