

HAMILTON ZONING BOARD OF APPEALS MINUTES OF MEETING

September 7, 2022 - 7:00 p.m.

Hybrid Zoom Meeting ID 885 2175 3459

Passcode 738164

Memorial Room, Hamilton Town Hall

577 Bay Road, Hamilton, MA

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

Others Present: Patrick Reffett and others as noted in the meeting.

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

PUBLIC HEARINGS:

Amend 2021 ZBA Decision/Appeal Town of Hamilton Building Inspector's Decision to issue a Cease and Desist Order. 3 Beech St. Eric Mimmo Applicant. Proposal to build an addition at the rear of the existing single family dwelling so that two additional stories may be constructed.

The ZBA had previously approved a one story addition for the existing house. The applicant was requesting a Finding to erect a second and third floor onto the structure. The existing septic system was approved for a four bedroom home but the third floor featured an unlabeled room, which could be considered a bedroom according to Erin Kirschner (Essex Board of Health Agent who was replacing Gregory Bernard, who recused himself due to a previous relationship with the applicant). The five bedroom total exceeded the septic capacity, according to Ms. Kirschner.

Eric Mimmo was present to recall that he had met with an architect who changed the proposal from a single to a two story addition to accommodate the roof/ceiling lines. The final home would still be a four bedroom home, according to Mr. Mimmo, who added that he would be willing to upgrade the septic whenever he decided to sell the home. The third floor was added due to the set back from and opportunity for a view of Chebacco Lake.

Members discussed the original drawings from October and compared them to the drawings submitted for the issuance of the Building Permit. It was noted that the Building Inspector had erroneously issued the Building Permit. The ZBA had approved a one story addition and the applicant was never told to return to the ZBA for an increase in the proposal. The increase also triggered a need for the Board of Health to approve a fifth bedroom due to the open space on the third floor. Bill Bowler indicated that approving the project without Board of Health approval would not be possible and that legally, the applicant did not have an approved plan. The ZBA might be able to provide some relief but the Cease and Desist would stand for the present time as there was no basis to overturn it.

Members agreed that they would not vote to approve a third story as it had been changed without ZBA approval.

Bill Sheehan was present to represent Denise Kelly (2 Beech St.). Attorney Sheehan distributed a table that compared the proposed home to local homes. Attorney Sheehan noted the home was grossly disproportionately large, adding that the structure would block sun and air. In addition to privacy concerns, Attorney Sheehan found the proposed structure would be detrimental to the neighborhood. Attorney Sheehan noted that the minutes clearly indicated a single story addition was proposed and issued concern regarding the near 4,000 sf home in a neighborhood of smaller homes. Attorney Sheehan submitted a copy of the building permit/permit card with a notation attached.

Rich Maloney (Hamilton Building Inspector) was present. Mr. Maloney noted that elevations were not shown on the Zoning application and the Decision referred to plans that were not explicit. Mr. Maloney was not an employee of the Town until July 1, 2022 and had only been assisting the Town in the absence of a Building Inspector. Bill Sheehan responded that the minutes of January 6, 2021 indicated that the proposal was for a one story addition.

Eric Mimmo responded that homes in the neighborhood were larger than the submitted list indicated and that the lakefront homes across the street would not be affected by the addition. Mr. Mimmo offered to limit the addition to only two stories, which would match the existing 25' ridgeline. Members agreed that they needed more time to consider the Board of Health requirements and impacts to the neighborhood.

Motion made by David Perinchief to continue the hearing until October 5, 2022 at 7:00 pm.

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.

David Perinchief attested that he had watched the video of the August 3, 2022 meeting, the only meeting that he had missed. Mr. Perinchief would submit the Mullin Rule form so that he would be able to vote on the issue.

Andrew DeFranza (Harborlight), Charlie Wear (Hancock Engineering) and Ben Timmons (Attorney for Harborlight) were present. Miranda Seimasko (Harborlight attorney) was present via Zoom.

Dan Hill (Attorney for Canterbrook abutters) was present to state that he had issued a memo regarding the Conservation Restriction. The issue was that the septic needed to be on the abutting property, which was held by Essex County Greenbelt. Ben Timmons argued that the restriction explicitly allowed the septic field to be located on the property as was noted in the letter, dated June 15, 2021 from Essex County Greenbelt granting permission for the use. The 1993 restriction was recorded in which the grantor, Ruth Patton Totton and her successor of interest, Bea Britton gave the Conservation Restriction to Essex County Greenbelt. Reserved rights for a septic system were allowed as long as the septic system was on the restricted land and served an adjoining unrestricted parcel. The parcel being developed by Harborlight would be the unrestricted parcel and the leaching field would be installed on the restricted parcel. Attorney Hill noted that the language was confusing because the restriction allowed for the transmission of sewage, such as a pipe but the leaching field would not transmit sewage, rather it would infiltrate 9,900 gallons per day (gpd) of effluent into the ground. Town Counsel did not have an opportunity to review the issue but thought the applicant would have a right to install a system based on the Greenbelt letter. Attorney Pucci cautioned the Board that they had the power to waive local regulations but not delve into property rights.

George Pucci noted that the three member Board only needed a majority and not a super majority to approve an application. Each member was only allowed to miss one meeting if they listened to the video or read the minutes of the meeting before signing the Mullin form.

Miranda Seimasko shared her screen to review the site plan. The impervious surface was 60,525 sf. The building created 23,050 sf. of impervious surface. The total impervious surface was 28% of the site. Title 5 required 110 gpd per bedroom. Preliminary testing for the leaching and reserve fields found sandy soils. GM2 (Peer Reviewers) had reviewed the plans and found separation between the fields needed to be incorporated. The design would be submitted to the Board of Health after official testing had occurred. The septic system would not meet the requirements for the Groundwater Protection Overlay District (GPOD) or Zone II. The 19 acres to the side of the parcel would be used for an aggregate plan. An adjustment would be needed to insure the parcels were adjacent. The 19 acres would also need to be downgradient.

Charlie Wear explained that the water line ran along the property line, up to Asbury St., running over the Canterbrook property before connecting to the water line along the Asbury St. right of way. Mr. Wear recalled that fire flows at Canterbrook were adequate and thought they would be similar for this project. Mr. Wear said stormwater would be collected from the rooftop and parking lot before being directed to the surface infiltration system and the subsurface infiltration system. The Stormwater Report had been submitted to the peer reviewers, who raised septic and drainage issues that could be addressed.

Charlie Wear recalled that projects with more than 15% of impervious surface in the GPOD needed a special permit. Projects over 15% impervious surface were required to have an infiltration system to recharge uncontaminated water into the ground. MA DEP Stormwater Regulations offered specific provisions on how to design projects in Zone II to meet the requirements. Members of the Board agreed that the GPOD Special Permit was under the purview of the ZBA but George Pucci suggested the Board focus on the performance standards.

Steven Sawyer (GM2 Peer Reviewer) was present via Zoom and agreed with the Stormwater design but questioned the soil testing within the area of the rear underground infiltration system, which should be within the footprint rather than nearby. Mr. Sawyer requested an infiltration mounding analysis but found the drainage system was appropriate for the scale and size of the development. Mr. Sawyer said septic fields had a maximum size of 5,000 gpd and the proposed field should be split into a primary and secondary field with a 10' separation. While most test pits were comprised of sandy soils, one pit had sandy loam. If pits had a perc rate less than five minutes, the field would need to expand. Some perc rates on the site had 50 minutes per inch, which would cause the size of the field to grow significantly. Mr. Sawyer said the land did not look adjacent on the aggregate plan and that the applicant would need to provide a Mass Analysis Land Credit for the area downgradient. A plan of how the land interacted would need to be provided. Charlie Wear indicated that soil testing had been done in the spring before the pandemic when soils were very wet and the one test pit had been an outlier. The Board of Health would be the entity to request a Mass Balance Analysis in accordance with Title 5. The Board of Health would be given a plan for approval before the ZBA made a decision.

Dan Hill stated that test pits dug during a drought would make it difficult to determine seasonal high ground water because mottling would not be present in sandy soils. Attorney Hill said the applicant needed to prove there was no degradation in the GPOD and Zone II areas either via a Mass Balance Analysis or a Pollutant Transport Model. Attorney Hill recalled that the size of Canterbrook was minimized based on the same issue.

According to Attorney Hill, having more than 440 gpd per acre was not permitted. The project had 1,800 gpd per acre based on 4.89 acres. It was noted 40,000 sf was used for acre under Title 5. The project had more than 400% of the maximum allowed under Title 5. Using the land adjacent could be approved with conditions by the Board of Health. Bill Bowler noted that Canterbrook also exceeded the limit as a similar property that met the standard. A clear image of the Facility Aggregation Plan should be provided. Attorney Hill added that wetlands could not be used as credit land and agricultural uses were not allowed under Title 5 as nitrogen would leach into the ground. Groundwater flow data should be provided, according to Attorney Hill.

Scott Horsley (Hydrologist) was present via Zoom. Mr. Horsley submitted a letter regarding the impacts to the wetlands, neighboring single family homes, and the Ipswich River Wildlife Sanctuary. According to Mr. Horsley more data needed to be provided to determine the impacts and that two test pits were needed per infiltration system. Mr. Horsley said the United States Geological Survey long term seasonal high water data should be used due to the current drought and that groundwater mounding analysis should include wastewater and stormwater systems' cumulative impacts. A table showing the drinking water supply impacts plan and evidence that the credit land was downgradient would be needed. A 10 mg of nitrogen downgradient limit should be considered. Charlie Wear responded that Canterbrook implemented a 550 gpd bioclear system, which was approved and that a Mass Balance Analysis was not necessary.

Ben Timmons said the Board of Health would oversee Title 5 and that the GPOD standards did not appear more restrictive than the State standards. The ZBA could condition the Comprehensive Permit upon Board of Health approval, which would cover the issues raised.

Bill Bowler said the ZBA would follow the Board of Health's decision regarding Title 5 and make its own decision regarding the GPOD. The Board would revisit the issue of water and sewer after an exchange of information between parties had occurred over the next month. An architectural presentation would occur on October 5, 2022.

Motion made by Bruce Gingrich to continue the hearing until October 5, 2022 at 7:00 pm.

David Perinchief 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.

David Perinchief attested that he had watched the video of the August 3, 2022 meeting, the only meeting that he had missed. Mr. Perinchief would submit the Mullin Rule form so that he would be able to vote on the issue.

Bill Bowler announced that a letter/petition from the Brownfield Development Neighbors had been received. The applicant had requested a straw poll regarding the viability of the project but a vote would not be possible until a complete project had been submitted. Andrew DeFranza (Harborlight) was present but did not have new information. Miranda Seimasko was present via Zoom. Attorney Bowler recalled that the parameters (affordability and residential population) of the project had changed since the initial application and that a vote would be after other Town Boards had a chance to offer their opinion. Attorney Bowler wanted a confirmation that the units would qualify for the Subsidized Housing Inventory. Andie Philip requested an in-depth definition of the hardship for the requested Variance.

Miranda Seimasko stated that the hardship was based on the six existing structures (including 210 apartments) that were incapable of being used in any fashion under the existing Zoning By-law in absence of relief even though the Variance would intensify the nonconformity. Attorney Seimasko said based on 210 apartments, the area requirement (40,000 sf for each unit) needed to comply with zoning, would be 193 acres. The entire parcel had 102 acres. Bill Bowler announced that a Warrant Article for Special Town Meeting would appropriate funds for an overall study of the best use of the property. Andrew DeFranza said Harborlight did not control the entire site and would not voluntarily participate between the Town and the Seminary. Mr. DeFranza said Harborlight had control until the third week in September and would request its deposit be returned if the path to development was not clear.

Martin Zee (37 Miles River Road) was present via Zoom to offer his concern about the project and lack of planning. Mr. Zee said it was spot zoning and the developer was creating their own hardship. Houses could be constructed on the rest of the property in the future. Hardship defined in the Zoning By-law (10.3.3.4), was created by the land or circumstances surrounding it. Mr. Zee asserted that hardship was not meant for spot zoning. The Variance would be appealed if granted.

Rick Mitchell (36 Rock Maple Ave.) was present to state the proposal was a massive project being considered without consideration for the entire parcel. Mr. Mitchell said he had met with Shawn Farrell (Hamilton Selectman), Scott Sunquist (Gordon Conwell), Joe Domelowicz (Town Manager), Ken Barnes (Gordon Conwell), and Myrian Walters (Gordon Conwell Attorney) when an agreement to share the costs of engaging a consultant to do a strategic plan to identify the highest and best use of the land was settled. Mr. Mitchell asserted that carving off 210 units would complicate the potential use of the property. According to Mr. Mitchell, the entire piece of land would be planned.

Rudolf Pizzano (Essex St.) was present via Zoom to state that there was no basis to claim a hardship as the State gave the applicant a way around any hardship via affordable housing applications. Mr. Pizzano was concerned that a change of ownership would affect the previous decision.

Myrian Walters was present via Zoom to respond that the sale of the apartment buildings would give the Seminary flexibility to work with the Town with respect to the rest of the property. Attorney Walters added that a change in ownership would not cause a change in use because the apartments were already there.

Valerie Peck (37 Miles River Road) was present via Zoom. Ms. Peck said the density of the existing apartments on 102 acres fell short of the dimensional table. Ms. Peck said it was inappropriate to disregard the density just because the buildings were already there and was concerned of the potential density of the remaining acres after the land had been subdivided.

Andie Philip suggested pulling the application and allowing the planning between the Town and Seminary to begin. Ms. Philip questioned if the application met the Variance requirement. Bill Bowler responded that there were two issues: change of use and the Variance. Attorney Bowler's opinion was to allow the change of use as it was only a change of use on paper. There were 210 units constructed no matter who owned them. Attorney Bowler found the Variance more problematic as the standard was so high. Bruce Gingrich and David Perinchief agreed, citing impacts to the Town and septic as well as the hardship issue.

Miranda Seimasko questioned the Board's reasoning. Bill Bowler responded that if the property required a Variance in the first place under the dimensional requirements, or if Harborlight were purchasing the entire

property, it might be possible because the Variance would not be intensified. It was agreed that there might be a hardship but it was questioned if Harborlight was the entity creating the hardship. The straw poll indicated that no members would vote to approve the Variance request in its present form.

Nancy Dashkind was present via Zoom and offered her concern that the buildings were not up to code and the septic was a concern. Ms. Dashkind hoped the Town would be given the chance to plan for the entire site.

Motion made by David Perinchief to continue the hearing until October 5, 2022 at 7:00 pm.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

REGULAR BUSINESS

Minutes – August 3, 2022

Motion made by Andie Philip to approve the minutes of August 3, 2022.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

DOCUMENTS REVIEWED

3 Beech St. Original and revised plans/drawings.

3 Beech St. Memo dated 8/30/22 from the Building Inspector.

3 Beech St. Cease and Desist, dated 7/2/22.

3 Beech St. Memo from the Conservation Commission

3 Beech St. Memo from the Board of Health.

3 Beech St. Permit card.

466 Highland St. Memo, dated September 5, 2022 from Dan Hill.

466 Highland St. Letter, dated June 15, 2021 from Essex County Greenbelt.

466 Highland St. Site Plan

466 Highland St. Letter, dated September 6, 2022 from Scott Horsley.

466 Highland St. 1993 Conservation Restriction.

466 Highland St. Stormwater Report.

466 Highland St. Facility Aggregation Plan.

130 Essex St. Letter/Petition from Brownfield Development Neighbors.

ADJOURNMENT

Motion made by David Perinchief to adjourn at 9:50 pm.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

Respectfully submitted as approved at the 10-05-2022 meeting.

Bill Bowler