

**HAMILTON ZONING BOARD OF APPEALS
MINUTES OF MEETING
November 2, 2022
7:00 p.m.
Hybrid Zoom Meeting 851 3432 0603
Passcode 490906
Hamilton Town Hall
577 Bay Road, Hamilton, MA**

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

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:

Continuation - Variance for proposed front yard setbacks for a new single family dwelling. 550 Bay Road. Mathew and Erin Curtin, owner. Ford Properties, applicant.

Bill Bowler said the ZBA had received a letter requesting that the application be withdrawn without prejudice.

Motion made by Bruce Gingrich to allow the petitioner to withdraw the petition at 550 Bay Road.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Continuation of Public Hearing. 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 applicant submitted consolidated plans for a two-story addition. The existing elevation was 25' at the highest point and the proposal was for 25.1' at the highest point. The change was not on the sheet provided. Eric Mimmo said he filed a four-bedroom restriction for the property. The basement was open space with an added bathroom. The overhang on the right side of the building created an encroachment and needed to be removed. Mr. Mimmo said it was temporary.

Neighbors had been concerned that a roof top deck would be constructed. Members discussed that based on the spacing of joists that would not be possible. The existing kitchen would need to be removed when the new kitchen was installed. Members did not believe the proposed building would block sunlight at sunrise or sunset. A lightbulb would need to be changed to remedy the light issue. Members discussed that they did not believe the proposed structure

would compromise the décor of the neighborhood as other large homes were constructed nearby. Detailed plans needed to be submitted showing the overlay of the plot plan line locations.

The issue to be addressed was the proposed square footage as the proposal did not exceed the height restrictions. Section 5.33 limited the addition to be under 100% of the base square footage. The original first floor was 868 with an approved addition (December 2021) of 400 sf for a total of 1,268 sf. The proposal was for an additional 2,068 sf. Eric Mimmo responded that the foundation had already been poured and the building was half built. Mr. Mimmo was worried about winter approaching and his inability to mitigate for snow and ice.

Bill Bowler noted the board was trying to work with the applicant but the requirements of the Bylaw needed to be met. Attorney Bowler read the section of the By-law that was applicable, adding that the Board would not approve something that would more than double the existing house. Attorney Bowler suggested that the applicant prove to the Building Inspector that he met the provisions of Section 5.33. The gross floor area is defined as living space excluding basement and attic space. The basement would be used as an online fitness studio (Fit for Mom). Three bedrooms would be added to the existing one bedroom that fit the criteria for a bedroom. Other original bedrooms would become hallways.

Denise Kelly (2 Beech St.) reiterated that the addition could not be more than 1,340 sf under Section 5.33. Ms. Kelly said her realtor told her that her home value would “take a hit.”

Sheila Lang (1 Beech St.) noted that the full set of plans, which were always changing, had not yet been submitted. Ms. Lang noted that elevations from all sides had not been seen. Ms. Lang did not think the project fit into the character of the neighborhood.

Tricia Vacari (37 Beech St. Ext.) said the applicant had exercised “chicanery” during the approval and construction process. Ms. Vacari said there was a 47’ by 30’ wall within 9’ of her property.

Emma Mimmo (via Zoom) spoke in support of her father’s proposal and hoped the plan would be approved that evening.

Members discussed conditions: The existing kitchen would be removed when the new kitchen went online; the temporary overhang on the left side of the house will be removed, the basement may not be used as living space (bedroom or living room), the additional cannot be greater than 100% of 1,340, the existing area would be determined by the Building Inspector who would look at the second floor plan of the approved addition, any addition approved under this decision cannot be greater than 100% of the gross floor area as determined by the Building Inspector, a revised plan showing that must be approved by the Building Inspector after a consultation with him; a rooftop deck could not be constructed; and a plan identifying the use of every room would be submitted.

Two votes were needed. The Cease and Desist Order would remain in place until this Decision is final. Bill Bowler reviewed the filing and appeal process. As the applicant had previous approval regarding the basement area, the Building Inspector would decide if Mr. Mimmo would be allowed to “button up” the basement floor.

Motion made by David Perinchief to grant the Extension of a Non-Conforming Use approving a second story building on 3 Beech St. based on plans that have been submitted as will be modified in consultation with the Building Inspector and the Decision would be subject to conditions that when the new kitchen is installed, that the existing kitchen will be removed; the overhang on the left side of the building currently will be removed; the basement may not be used as a bedroom and/or living space; the approved addition may not exceed 100% of the gross floor area of the existing dwelling as determined by the Building Inspector; the submitted plans will identify the use of each room; and no roof top deck will be permitted.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

Motion made by Bruce Gingrich to deny the appeal of the Cease and Desist order until such time as the decision just voted upon becomes final and when the Building Inspector is happy with the plan when the Order will be lifted.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Continuation of hearing for a Comprehensive Permit for a 45 unit multifamily housing project at 466 Highland St. The Britton Family Trust, LLC (owners) and Harborlight Community Partners (applicant).

Andrew DeFranza and Charlie Wear (via Zoom) were present. Mr. Wear showed the upgraded Site Plan including lot coverage.

Charlie Wear discussed the changes based on the GM2 Associates (peer reviewer) report. The Stormwater Report had changed as the flow paths were not depicted on the original report. The underground filtration areas were shown, GM2 Associates had suggested slower infiltration rates so adjustments were made. Additional soil testing and mounding analysis were done. It was noted that the property line was that of the applicant so changes in the distance to the property line were not required as a potential well could not be drilled on the adjacent property because it was restricted agricultural land.

The applicant had asked for a waiver in the GPOD Section 9.1 - 9.3 which required a special permit from the Board if more than 15% of the parcel was impervious. Charlie Wear indicated that the plan met the requirement with the infiltration and vortec systems. According to Mr. Wear, the abutters still had concerns so the lot was expanded by five acres. Harborlight would be purchasing 24 total acres to protect the well. Title 5 allowed for a septic system to be built within a Zone II if it met the Regulations of the Zoning By-law and Title 5 while adequately protecting the well. Mr. Wear said the proposal was in full compliance. 5.8% of the site would be impervious, which was less than 15%.

The details of the Presby septic system had been submitted to the Board of Health. According to Charlie Wear, the system would protect the groundwater and wells as the larger site would not exceed 440 gallons per day of effluent per acre. Mr. Wear said the same level of protection was being proposed as had been approved at the project next door.

The septic inspector had reportedly requested that test pits be conducted again in the spring due to them having been conducted during a drought. Charlie Wear said soil modeling was done where elevations could be seen in the soils. Reportedly the soil evaluator thought it was adequate but Greg Bernard (Hamilton Board of Health) was reportedly concerned that the modeling was not convincing and wanted to have observation wells in the spring to confirm groundwater levels. Mr. Wear said he would adjust the level if different and that a semi-permanent well head would be installed to monitor where the high water groundwater existed.

Patrick Reffett said that since the size of the site increased from five to 24 acres, there was a necessity for additional peer review. The Town had received a check from the applicant for additional work, which would be finalized and available prior to the next month's meeting.

Dan Hill (attorney for Canterbrook) noted that the applicant needed to have site control of the additional land while the applicant only had an option for acquisition. Andrew DeFranza responded he would provide the amendment to the option that documented the extra five-acre option. Attorney Hill wondered how much of the additional land was wetlands because wetlands did not provide dilution or recharge. Charlie Wear responded that he didn't know how much of the area was wetlands but Title 5 did not have a requirement regarding wetlands, only square footage. While Attorney Hill questioned if the land under conservation restriction could be used, Bill Bowler responded that special counsel opined that the issue would be between Essex County Greenbelt and the applicant rather than the Zoning Board.

Amy Clark (15 Canterbrook Lane) noted the letters on file from the group and offered concern regarding the conservation land. Essex County Greenbelt had reportedly said the use was allowable under the restriction. Ms. Clark said she thought the proposed building looked like a hotel and recalled that revised architectural plans were to be submitted. Bill Bowler explained that the Board sets the decision and conditions, which would be implemented by the Building Inspector.

Kathy Ingemi (14 Canterbrook Lane) said a letter would be submitted regarding traffic.

As new information had been submitted that needed to be reviewed by the peer reviewer, Mr. DeFranza agreed to have the hearing continue until the December 7, 2022 meeting.

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

Seconded by David Perinchief.

Vote: Unanimous in favor.

REGULAR BUSINESS

Minutes – October 5, 2022

Motion made by David Perinchief to approve the minutes of October 5, 2022.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

DOCUMENTS REVIEWED

550 Bay Road. Letter from the applicant requesting to withdraw without prejudice.

3 Beech St. Updated plans.

466 Highland St. Update Site Plan

466 Highland St. CM2 Peer Review Report

466 Highland St. Stormwater Report.

466 Highland St. Septic System Plan.

ADJOURNMENT

Motion made by David Perinchief to adjourn at 8:46 pm.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

Respectfully submitted as approved at the December 7, 2022 meeting.

Bill Bowler