

## MEMORANDUM

To: All Planning Board Members

From: Marnie Crouch

Date: February 23, 2023

Re: Hamilton Zoning Bylaw's applicability to the GCTS site

The Hamilton Zoning Bylaw has numerous provisions that potentially could apply to the GCTS site, including 3.0, Use Regulations; 4.0, Dimensional and Density Regulations; Section 5.0, Nonconforming Uses and Structures; Section 6.0, General Regulations; and Section 8.0, Special Residential Regulations. Notably, conversion for temporary additional living area is authorized only by special permit (Section 3.4), as is conversion of a single family dwelling to a two family dwelling (Section 3.5) and the creation of accessory apartments Section 3.6 and 3.7).

Development under Section 8.1, Open Space and Farmland Preservation Development, and Section 8.2, Senior Housing, requires a special permits as do certain uses and activities outlined in 9.1.9 of the Groundwater Protection Overlay District.

Development under Section 9.3, the Estate Overlay District; Section 9.4, the Willow Street Overlay District; and Section 9.5, the Commercial Overlay District (except for wind energy facilities which are permitted as of right subject to Site Plan Review) requires a special permit.

Section 10.0 of our Zoning Bylaw, captioned Administration, is administered and enforced by the Building Commissioner. Section 10.1.2 Building Permit Required provides:

It shall be unlawful to construct, alter, reconstruct or relocate any Building or Structure or to institute a new or altered use of a Building, Structure or land without first obtaining a Building Permit from the Building Commissioner. . . . *A Special Permit and/or Site Plan Approval under Section 10.5 [Special Permits] and/or 10.6 [Site plan Review] may be required for some uses prior to Building Permit issuance.* (emphasis supplied).<sup>1</sup>

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<sup>1</sup> Section 10.0 contains additional pertinent provisions as follows:

10.1.3 Application for Permit. Any application for a permit shall be accompanied by a specific reference to the subject lot or group of Lots in the same ownership as recorded in the Registry of Deeds, and by copies of a plan of the proposed lot, drawn to scale, showing the entire recorded ownership, all existing structures, all abutting streets, and the exact area and boundaries of the parcel to be assigned to the subject use, and the proposed outline and location of each and every proposed Structure on the subject lot, and the location and length of any proposed driveway from the access street to the building site. There shall also be shown on said plan the existing or proposed sewerage system and all distances necessary to establish full compliance with this Bylaw, including building frontage, areas proposed to be occupied by buildings or structures, yards and sideline distances. The accuracy of said plan and the information thereon shall be

Section 10.6 provides in pertinent part:

10.6.2 Projects Requiring Approval. No Building Permit shall be applied for or issued for any construction or alteration subject to this Section, as specified below, until a site plan has been approved or conditionally approved by the Planning Board as set forth herein. Except as exempted in the Bylaw, *Site Plan Review shall be required for the following construction, alterations, and uses:*

1. *Any new construction or alteration or expansion of, or conversion to a business, office, industrial, institutional, or multi-family residence building or structure in any district;*
2. *Any alteration or extension of a nonconforming commercial, industrial, or institutional structure in a Residential Zone;*
3. *Parking lots over five (5) spaces serving any of the above-listed types of buildings, schools, hospitals, nursing homes, long term care facility, life care facilities, children's camps, campgrounds, churches, multi-family structures for more than two (2) families, government buildings and structures, farm stands, and buildings in commercial, and/or office use;*
4. *Industrial and scientific research use under Section 3.2;*
5. *Stables providing boarding and/or services for more than six (6) horses other than those owned by the residents of the Lot on which the stable is located;*
6. *Greenhouses for commercial production of plants or produce;*
7. *Interior alterations which increase the commercial, industrial, institutional or multi-family floor area within an existing building, and/or which change the number of separately leasable or saleable spaces within an existing building; and*

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certified by the applicant and shall be staked out on the land and left in place until the final inspections are made.

Approval of an application is dependent in many instances upon obtaining a special permit or site plan approval. 10.1.4 Approval of Applications, provides:

The Building Commissioner *shall not issue a permit* for the construction, alteration, reconstruction or relocation of a building or structure if the building or structure as constructed, altered, reconstructed or relocated would be in violation of this Bylaw, or for a new or altered use of a building, structure or land if the use would be in violation of this Bylaw, *unless the applicant has secured a Special Permit or Site Plan Approval or variance from the Board of Appeals or Planning Board, as designated herein.*

8. Wind Energy Facilities in the Commercial Overlay District. (emphasis supplied).<sup>2</sup>

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<sup>2</sup> Section 10.0 provides for abbreviated site plan review under certain circumstances. Section 10.6.3 Projects Requiring Abbreviated Site Plan Review provides:

Proposed additions or alterations to existing buildings subject to Site Plan Review which would either add new floor area totaling less than ten (10) percent of the current ground floor area of the existing building, or which are estimated to cost less than ten (10) percent of the current one hundred (100) percent assessed valuation of the building shall require only Abbreviated Site Plan Review as provided below. For purposes of applying this guideline, when ground floor area includes attached residential floor area or attached commercial greenhouses, the area of the residential and/or greenhouse portions shall be deducted before applying the ten (10) percent threshold factors.

There are exemptions to site plan review as set forth in 10.6.4 Exemptions from Site Plan Review. That section provides that the following activities do not require Site Plan Review or Abbreviated Site Plan Review:

1. Interior alterations unless the alterations increase the floor area within the building devoted to any of the uses listed in Section 10.6.2 and/or change the number of separately leasable or saleable spaces within the Building. Examples of exempt interior alterations are: paneling, shelving, partitions other than those creating new commercial units, counters, flooring and general interior decoration;
2. Repairs, repainting, residing, reroofing and window replacement unless the activity also increases floor area;
3. Replacement of parts of a partially damaged building that would normally require Site Plan Review with generally identical portions. Total replacement of such a destroyed building shall require Site Plan Review;
4. Demolition of a building or structure;
5. Change of tenant of commercial building unless there is also new construction triggering Site Plan Review;
6. Customary home occupations;
7. Townhouse or Multifamily housing developed under Sections 8.1 (OSFPD) or 8.2 (Senior Housing);
8. Uses permitted by Special Permit within the Commercial Overlay District; and

Section 10.6 contains numerous other provisions that are worthy of your review, including the Site Plan Standards set forth in Section 10.6.12.

With the foregoing as background, Attorney Walters, at the February 14, 2023 Planning Board meeting, advocated for “as of right” development on the GCTS site with very limited site plan review, and even more limited special permitting. Accordingly, the Planning Board, must consider whether Mr. Walters misapprehends our Zoning Bylaw and its salutary purposes as set forth in Section 1.1 and its Applicability provision set forth in Section 1.4.

When viewed in its entirety, our Bylaw gives property owners in Hamilton as well as developers only circumscribed rights to construct new structures, or alter, expand, or convert existing structures *without* site plan review or special permits. We must ask ourselves whether, if we were to endorse “as of right” development for the GCTS site as contemplated by Mr. Walters pursuant to the scenarios laid out by the Consultants, we would be endorsing development that would be unavailable to any other property owner in Hamilton, or any developers proposing projects outside an Overlay District drafted in accordance with Mr. Walters’s approach, absent an applicable exemption under Section 10.6.4. Indeed, Section 10.7, Site Plan Review for Religious and Educational Uses and Certain Child Care Centers, which section is applicable to the Seminary owing to the Dover Amendment, *see* M.G.L. ch. 40A, § 3, contemplates in its very title site plan review.

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9. Entries B.1, B.3, and B.7 [There is no B.7] in the Table of Uses shall require Site Plan Review under Section 10.7. [Site Plan Review for Religious and Education Uses and Certain Child Care Centers].