

**HAMILTON ZONING BOARD OF APPEALS  
MINUTES OF MEETING**

**June 7, 2023**

**7:00 p.m.**

**Hybrid/Zoom Meeting 827 2268 8157**

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

**Others Present:** Others as noted in the meeting.

This meeting was called to order at 7:13 pm with a quorum established.

**PUBLIC HEARINGS:**

**39 Tally Ho Drive. Variance from the front yard setback in order to construct a 316 +/- front porch. Patrick Norton, owner.**

Patrick Norton was present. Mr. Norton shared his screen via Zoom to show photos of the site. The home was not parallel to the front yard property line. The surveyor indicated that the corner of the house was 32.6' to the property line and 58' from the corner of the house to the center of the roadway. The proposed porch would be 6' wide and 23' 6" from the sidewalk. The existing shrubs were further into the yard than the proposed porch, according to Mr. Norton. The front elevation was shown. Windows would be reconfigured. The Bylaw stated the set back was 25' from the street or 50' from the center line of the road, whichever was greater. Houses on either side were the same setback as the home being considered. Mr. Norton wondered if he had an existing non-conformity with this front step.

Members discussed that if the project were allowed, the neighbors would also be allowed the same setbacks. Members discussed that it would be difficult to make the porch smaller. The step and shrubs were already in the area. Two steps would be needed to get up onto the porch. Bill Bowler noted that Variances were difficult to grant and wanted more clarification as to setbacks of next door neighbors and from the structure to the center line. Bruce Gingrich noted that the By-law referred to street line and not property line. Mr. Bowler suggested making a Finding that the By-law requirements were met and a Variance was not needed as the building was 58' from the center line of the street. The building Inspector would be notified. A Finding of Fact would be issued as the applicant met the terms of the By-law without conditions.

Motion made by David Perinchief that the proposed addition of a front porch meets the terms of the By-law.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

**21 Blueberry Lane. Continued Public Hearing for a Special Permit for an accessory apartment. Nathan Smith, owner.**

Nathan Smith was present via Zoom to propose a second kitchen to be constructed in an accessory unit downstairs of the existing residence. Mr. Smith indicated that he would need to file a deed restriction with the Board of Health as the applicant was only using three of the five

bedrooms including the accessory unit. The deed restriction would limit use to five bedrooms. No exterior changes would be made. Parking would be sufficient.

The Building Inspector sent a memo regarding the application. The lower level was inspected and measured for the kitchen addition. A floor plan was submitted. Square footage would be in the 800's. Bill Bowler reviewed the requirements of the By-law to find the applicant would be in compliance. A special condition would be that the unit could not be occupied until the deed restriction had been approved by the Board of Health and filed with the Registry of Deeds.

Motion made by David Perinchief to grant the petition for an accessory apartment.  
Bruce Gingrich seconded.  
Vote: Unanimous in favor.

**438 Asbury St. Continued Public Hearing for a Special Permit for the construction of an accessory apartment. Paul Thober, owner**

The petitioner requested a continuance until August 2, 2023.

**DISCUSSION.**

**Continued Discussion: 466 Highland St. Board to discuss the appeal by Harborlight Community Partners of the Comprehensive Permit Decision for a 45 unit affordable housing complex.**

George Pucci (KP Law - Special Counsel) was present. Ben Tymanns (Harborlight) was also present and noted that no other requests were made since the previous meeting.

Section 5 Regulatory Conditions, Paragraph 2. The change was in regard to the change from 60% adjusted median income to 80% adjusted median income. George Pucci said it would still qualify for the Subsidize Housing Inventory and recommended accepting the modification. Ben Tymanns said Hrborlight planned on doing 60% adjusted median income but wanted flexibility. Motion made by Bruce Gingrich to approve the proposed changed to Paragraph 2 of Section A of the Regulatory Conditions.  
David Perinchief seconded.  
Vote: Unanimous in favor.

Section A of Conditions, Paragraph 5. The applicant proposed a reference change from "V" to "A.3."  
Motion made by Bruce Gingrich to change the Roman Numeral.  
David Perinchief seconded.  
Vote: Unanimous in favor.

Section A of Conditions, Paragraph 1. The applicant proposed a reference change from "V" to condition "B.1."  
Motion by Bruce Gingrich to approve the change.  
Second by David Perinchief.  
Vote: Unanimous in favor.

Paragraph 7 of Regulatory Conditions. The applicant proposed a change regarding local preference.

Motion by Bruce Gingrich to approve the change to Paragraph 7 with the strike out as proposed by the applicant.

David Perinchief seconded.

Vote: Unanimous in favor.

Section B of the General Conditions, Paragraph 6. The change was in regard to the obligation of the terms and conditions to the successors and assigns, which shall run with the land.

Motion made by Bruce Gingrich to approve the proposed change to Paragraph 6 of Section B of the General Conditions.

David Perinchief seconded.

Vote: Unanimous in favor.

Section B, Paragraph 13. The change would allow the Town of Hamilton to construct communication devices on the buildings. Bill Bowler noted the applicant and Town would need to get approvals from other boards as required.

Motion made by Bruce Gingrich to approve the change to Paragraph 13 as proposed by the applicant.

David Perinchief seconded.

Vote: Unanimous in favor.

Section B, Paragraph 8. The change was in regard to erosion and sedimentation control measures and their relationship to local and State Regulations. George Pucci noted that consistency with a NEPDES permit and plan and consistency with other permitting Boards were required.

Motion by Bruce Gingrich to approve the substitute prefatory language to Paragraph 18 provided by the applicant.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Section B, Paragraph 19. The change would allow for consistency with local and State permitting regarding erosion control measure inspections.

Motion made by Bruce Gingrich to approve the additional language to the first sentence of Paragraph 19 as proposed by the applicant,

Seconded by David Perinchief.

Vote: Unanimous in favor.

Section B, Paragraph 29. The change was in regard to blasting if the applicant's engineer determined that limited blasting was necessary. Notification and State and local laws would apply. Ben Tymanns noted that the request was to eliminate any delays in construction. Members discussed that the applicant would be able to come back and seek an amendment if the ZBA did not want to approve the change. George Pucci agreed that nothing would preclude the applicant from seeking a modification in the future without an appeal. Attorney Pucci recommended that the change be considered a substantial change. Attorney Tymanns preferred the opportunity to withdraw the revision rather than vote on the change. Attorney Tymanns

requested the applicant be able withdraw the language to the change in Paragraph/condition 29 of Section B of the Conditions.

Motion made by Bruce Gingrich to allow applicant to withdraw the language to Paragraph 29 of Section B of the Conditions.

Seconded by David Perinchief

Vote: Unanimous in favor.

Section C, Conditions prior to issuance of the Building Permit, Paragraph 1.C. The change was in regard to the timing of the issuance of the Building Permit. Members agreed that the Building Permit could be conditioned but the subsidizing agency would not grant the Regulatory Agreement until Building Permit was produced.

Motion by Bruce Gingrich to approve the proposed changed language to Paragraph 1.C. of Section C.

David Perinchief seconded.

Vote: Unanimous in favor.

Section D, Conditions prior to issuance of Certificate of Occupancy. Paragraph 2. The change was in relationship to landscaping being installed prior to the release of a Certificate of Occupancy or a surety instrument until the landscape was in place. The term discussed was regarding landscaping being installed adjacent to the buildings. Bill Bowler wanted to ensure that landscaping along the property line with the Canterbrook property would be included in the definition of "adjacent." Ben Tymanns proposed an amendment at the end of Paragraph 2 to include "'adjacent landscaping' for purposes of this paragraph shall include that portion of the project landscaping plan at the Canterbrook farms property line. "

Motion by Bruce Gingrich to approve the amended amendment language to Paragraph 2 of Section D.

David Perinchief seconded

Vote: Unanimous in favor.

Section D, Paragraph 4. The change was to add to the end of the last sentence that the Letter of Credit would not be suitable surety. A General Contractor bond shall be satisfactory.

Motion made by Bruce Gingrich to approve the amended language to Paragraph 4, Section D.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Section E. Special Conditions, Paragraph 2. The change was to add that the hours of 7:00 am to 6:00 pm for the dumpster (located at the NW corner of Canterbrook Lane) be picked up once per week would be changed to "except for special circumstances such as a move out or move in."

Motion made by Bruce Gingrich to approve the amended language to Paragraph 2 of Section E.

Seconded by David Perinchief.

Vote: Unanimous in favor.

Section E, Paragraph 3. The proposed change was to ensure that the applicant would pay their fair share (\$172,058) for the sidewalk to Highland St. contingent on the full sidewalk budget being available in advance with the Town and Canterbrook agreeing to fund their respective portions. Bill Bowler stated that he did not believe Canterbrook would pay and suggested that a

contingency be in place that if the Town moved forward with the sidewalk, that Harborlight would pay the \$172,058. Ben Tymanns suggested striking the words “Canterbrook Village”. Motion made by Bruce Gingrich to approve the language proposed by the applicant for Paragraph 3 with the exception “and Canterbrook Village” agreeing to fund their portion. The section would read: “contingent on the sidewalk project budget being available in advance and the Town also agreeing to fund its portion, the applicant would pay a fair share.” Motion made by Bruce Gingrich to approve the language.  
Seconded by David Perinchief  
Vote: Unanimous in favor.

George Pucci suggested a finding be made that these were not substantial changes. Motion made by Bruce Gingrich to accept the changes voted upon to the Decision the Board finds that these are insubstantial changes.  
Seconded by David Perinchief.  
Vote: Unanimous in favor.

George Pucci would prefer to have one document modification with all other terms and conditions remaining. The Board would sign the amended document. An appeal period would not exist.

**Board discussion of reorganization. Vote for Chair and Vice Chair.**

Bill Bowler intended on resigning. An August meeting (August 2, 2023) was set with no meeting in July unless a filing required a meeting.

**REGULAR BUSINESS**

**Minutes**

Motion made by Bruce Gingrich to approve the minutes of April 2023.  
Seconded by David Perinchief..  
Vote: Unanimous in favor.

**DOCUMENTS DISCUSSED**

39 Tally Ho Drive. Photos and elevation.  
21 Blueberry Lane. Plan, deed restriction, and Memo from the Building Inspector.  
Conditions within the Comprehensive Permit Decision at 466 Highland St.

**ADJOURNMENT**

Motion made by David Perinchief to adjourn at 8:31 pm.  
Seconded by Bruce Gingrich.  
Vote: Unanimous in favor.

Respectfully submitted as approved at the 07-05-2023 meeting.

Bill Bowler