



Pursuant to the Open Meeting Law, MGL Chapter 30 A, §§ 18-25, written notice posted by the Town Clerk delivered to all Zoning Board of Appeals members, a meeting of the Hamilton Zoning Board of Appeals was posted for May 1, 2024 at 7pm at the Hamilton-Wenham Public Library, 14 Union Street, Hamilton. This meeting was held in person and was accessible by Zoom as a courtesy for the public.

Call to order: *With a quorum present, Chair Gingrich called the Zoning Board of Appeals meeting to order at 7:00 PM, identified the meeting was being recorded and those present:* Bruce Gingrich (Chair), Steven Derocher, Andrea Philip (via zoom), David Perinchief. Also present: Patrick Reffett, Director of Planning and Inspectional Services, and others as noted.

PUBLIC HEARING: The application is for the property owned by Linda McMahon located at 89 Greenbrook Road, Assessor's Map 58, Lot 33. Applicants are seeking a Finding under Zoning Bylaw Sec. 5.3.4.5, for Dimensional Relief for side yard set-back, and approval for a Special Permit, Zoning Bylaw 3.6 for an Accessory Apartment.

Chair Gingrich recused himself from this agenda item as he lives on this road. S.Derocher chaired this agenda item. Linda McMahon and Matthew McMahon spoke about building a small accessory apartment over the garage. S.Derocher explained that there is no change to the setback, and that the accessory apartment plans do not seem to have anything in violation of the bylaw. The homeowners noted that one bedroom in the primary dwelling will be converted to an office to stay within the 4-bedroom septic limit for the property.

Vote: *The Board voted unanimously by roll call to approve the project at 89 Greenbrook Road.*

PUBLIC HEARING: The application is for the property owned by David & Ashley Forster for the property located at 68 Union Street, Assessor's Map 55, Lot 213. Applicants are seeking a Finding under Zoning Bylaw Sec. 5.3.4.5 for Dimensional Relief for side & front yard set-back requirements on a lot with double frontage in order to connect garage to house & create living space (bedroom, bath, hall), and a Variance under Sec. 4: Dimensional & Density Regulations, for lot coverage; current 23.6%, proposed 27.7%.

Dave & Ashley Forster explained that they would like to convert their detached garage to a bedroom and connect the garage to the main house with a one-story addition of a hallway and bathroom. Chair Gingrich noted that it is a small lot and it is hard to do anything without some encroachment. A variance would be needed in order to fulfill their building plan which exceeds the allowable square feet by about 2.7%, because of the encroachment on the setback. A.Philip explained when they have granted variances, it was because of a hardship, and there does not appear to be a qualifying hardship in this case. Chair Gingrich recommended removing a foot from the back wall in order to reduce the square footage by approximately 20 square feet, and therefore meet the requirements and negate the need for a variance. Chair Gingrich recommended that they continue the request to next month, and encouraged the homeowner could go back and redesign the plan to stay within the setback.

Vote: *The Board voted unanimously by roll call to continue the application from 68 Union St to next month.*

PUBLIC HEARING: The application is for a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20 – 23, for a portion of the property at 133 Essex Street, Assessor's Map 65, Lot 01, submitted by Chebacco Hill Capital Partners, LLC. The applicant seeks authorization to construct fifty-nine mixed income age restricted residential for sale units in thirty-two buildings.

Attorney Brian Winter from Mead, Talerman & Costa introduced himself as representing the applicants Larry Smith and Julie Dickinson. Attorney Winter presented a PowerPoint presentation describing the proposed project that includes 59 senior housing units in 32 buildings, with 15 units restricted as affordable housing in perpetuity. The site is approximately 57 acres, the development is planned for just 16 acres, while 40+ acres will be placed in a conservation restriction in perpetuity and will be held by the town. This private wooded lot will become open to the public with trails, parking, etc., it will be an amenity to the community.

Because the town (Hamilton) is below the state 10% affordable housing requirement, this project will bring the Town into a one year safe harbor because it will increase affordable stock by 0.5% in one year. He explained the applicant's qualifications and the segments of the application that are in place. The presentation showed artistic renderings of what the development would look like from the street, and displayed an aerial map view to show the proposed

development and the preserved woodland portion including trails. Greg Roy, an engineer from Dillis & Roy Civil Design Group, Inc., remarked on the site design, trails and walkability, and utilities. He explained the road access from Chebacco Rd, the road layout of the development, and the type of units, including singles, duplexes, and triplexes. He described the wastewater plan that will be compliant with Title V, as well as the wetland delineations, buffer zones, and vernal pools. There is no disturbance within the resource areas or buffer zones. The development has been designed within the Mass Stormwater Management policy and they have documented compliance. He described the elements of the stormwater management plan. Ken Feyl, an architect from Lagrasse, Yanowitz and Feyl, presented the architectural design of the development, showing floor plans and artistic renderings the units.

Chair Gingrich requested a history of the project noting that it was originally denied by the Planning Board. Attorney Winter spoke about the safe harbor provision, and opined that the Town cannot invoke safe harbor if the application includes eligible affordable housing units. He discussed the Town's zoning bylaws and the options if provides for compliance that the developer is following. Larry Smith, managing director of Chebacco Hill Capital Partners explained the difference between the original application and this one, including the architectural differences and the addition of affordable units. He noted that trespassing has occurred on the property for years, and this project eliminates that issue by welcoming the public to the trails.

P.Reffett introduced himself and Town Counsel Attorney Amy Kwesell, KP Law. He noted that the engagement of peer review will be paid for by the applicant. The engineering company the Beta Group is the selected vendor, and he recommended that the ZBA accept them and get the peer review started as soon as possible.

Vote: The Board voted unanimously by roll call to accept the proposal to employ Beta Group as peer reviewer for this project.

Attorney Kwesell explained the Town's progress in terms of housing production and safe harbor status. Hamilton is currently approximately at 5% for affordable housing, short of the state requirement of 10%. The Town also lost safe harbor status because a planned affordable development did not get built within the required time frame. She further explained that the developer is arguing that the payment in lieu of affordable housing from the previous application is equivalent to affordable housing units, but that is in dispute by the abutters' counsel. She advised the Board that they have several options, including to agree that a payment in lieu is not equivalent and move forward with hearing the application. The other option is to invoke safe harbor and thereby reserve the right to condition or deny the project. The applicant can appeal the safe harbor invocation to the state, and the determination will be made within 30 days. P.Reffett further advised that safe harbor allows for a project to be deferred for a year, or possibly two years for a larger project.

Public Comment:

- **Ken Whitaker**, Wenham, representing Save Chebacco's Trails and Watershed spoke regarding the complexity of the state regulations, and in particular the safe harbor provision. He opined that there is no case law supporting the idea that payment in lieu is equivalent to housing. He spoke to reasons why the ZBA should exercise the option for a 12-month delay, as the original project is still under appeal. He pointed to the opinion of the Planning Board and the multiple deficiencies they found with the original project and that those problems are still relevant. He also opined that the developer is not committed to this project, and will revert to the original project if that should be approved by the state. He stated that there is no harm to the Town in taking advantage of the delay, and would give the opportunity to think through how to reach the affordable housing threshold and safe harbor. He also cited that there is significant opposition to the project from people in Hamilton. He implored the Board to consider preventing the destruction of the woodland.
- **Attorney Dan Hill** praised the comments of Town Counsel Kwesell and K.Whittaker, and added that the safe harbor regulation when properly invoked makes the decision of the Board consistent with local needs and the burden shifts to the applicant to attack that standpoint. The Town can also invoke safe harbor and continue with the hearing and peer review of the project and create leverage to push back on the developer and help to create a project that would be more acceptable to the Town. He also expressed his disagreement with the developer's assertion that the 2022 payment in lieu of housing units qualifies as affordable units and negates the safe harbor. He believes safe harbor certainly applies in this case if the Board chooses to invoke it, and the applicant has the ability to appeal that. He recommended invoking safe harbor this evening, and continuing the hearing.

- **Heather Ensworth** of the watershed protection alliance expressed the concern of the community about the safety of the watershed and the drinking water supply area of Chebacco Lake, that is the only water supply for Hamilton. She stated that they have been in touch with Senator Tarr and claimed he was in favor of invoking safe harbor.
- **Katie Vandi** of Meadowbrook Farm stated that she and her family have farmed organically in Hamilton for 50 years, and farmed some of the land in question. They had their land lease terminated because they would not sign an easement giving the developer rights to their property for the septic system of the proposed development. She expressed serious concerns about a large septic system and leaching field being sited so near to their farm and to the watershed, raising a significant risk of contamination from 10,000 gallons of effluent and untreated stormwater flowing into the watershed. She described the benefits of their farm to the Town, and what would be lost in the event that their farm fails.
- **John McGrath** of the Finance Committee spoke about the risk tolerance of the Town, and that there are already other large projects underway in the Town. He views this project as being very high risk and at a level that the Town does not want to accept. He acknowledges the revenue that could be gained, but noted that the environmental and other impacts outweigh the potential gains.

Attorney Winter for the applicant spoke to the perception of the commitment. He noted that they have engaged with the Town's Select Board to negotiate an agreement on this project. There is no agreement to date, but they have engaged with multiple tiers of the town government in order to advance this project, demonstrating their commitment. If the Town invokes safe harbor, the applicant could challenge that, which would consume resources on both sides. They agree that there is no case law on the payment in lieu of units issue. However, he explained that Hamilton bylaw 8.3.1 states the purpose is to produce high quality affordable housing units, and further that the bylaw uses the term "equivalence fee" in lieu of units. This is clearly stated in the Town bylaw and that is what makes this case different, in that the payment in lieu of units is codified in the Town's own bylaws. However, they are happy to return and continue the discussion if the Board prefers.

D.Perin chief stated that given the conflicting opinions from the attorneys involved, two sets of litigation ongoing, new information provided at the meeting, and the safe harbor option, his recommendation is to invoke safe harbor. B.Gingrich concurred and noted he would like more time to examine the evidence and look further at the issues and potential damage to the environment. S.Derocher and A.Philip concurred. Attorney Kwessel noted the applicant would have 15 days to challenge the invocation of safe harbor.

***Vote:** The Board voted unanimously by roll call to approve the following motion: That the Board determined under 760 CMR 56.038a that the Board considers that the denial of a requested comprehensive permit under the application by Chebacco Hill Capital Partners LLC regarding the proposed GL 40b development at 133 Essex St, Hamilton, MA or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law. The Board determined that the application proposing the development of 59 mixed income residential dwelling units in 32 buildings with 15 units income restricted to households at or below 80% of AMI, which is the application, is a related application pursuant to GL Chapter 40b sections 20 through 20.23 n760 CMR 56.037 as the application concerns the same property 133 Essex St on which there is a pending application for a similar real estate development project, 50 housing units under the Town Senior Housing zoning bylaw. The Board elects to proceed with the full local hearing, the Board having the right to deny the application or to grant the application with conditions and with the applicant having no right of appeal to the Housing Appeals Committee from the Board's decision. The Board approves the attached written notice to the applicant with a copy to EOHC to invoke the related application Safe Harbor and to authorize the Chair, the Director of Planning and Inspectional Service and Town Counsel to finalize and send written notice within 15 days of the opening of the May 1, 2024 public hearing on the application.*

Chair Gingrich noted that they hope to work with the group and make something work for the Town, they are not against development or against affordable housing.

There was continued discussion regarding the timeline under the various possible circumstances and based on whether the applicant will appeal the decision or not.

Attorney Winter noted that the applicant will take everything under consideration and make a careful decision on their next steps. He indicated that if they choose to appeal, they will not likely fund the peer review process, as it would not be a prudent use of resources to do both.

Vote: The Board voted unanimously by roll call to continue the hearing to the meeting of July 10, 2024.

Regular Business:

- **Draft Meeting Minutes Review** – April 3, 2024

*Vote: The Board voted unanimously by roll call to approve the minutes of **April 3, 2024**.*

Adjournment:

Vote: The Zoning Board of Appeals voted unanimously by roll call to adjourn at 9:27PM.

Respectfully submitted by

D. Pierotti, Recording Secretary

5/14/24

The minutes were prepared from video.

Documents:

- 133 Essex Street – Comprehensive Permit Application – March 2024
- 133 Essex Street – Mass Housing Application
- Project Eligibility-Site Approval Letter from Mass Housing – 01-16-2024
- Comments from Board of Health
- Notice of Public Hearing 133 Essex Street
- Correspondence
- 133 Essex Street – Chebacco Hill – Material to be presented by Representatives of the Applicant – 05-01-2024
- Ex. E. Purchase and Sale Agreement
- Ex. E.i. P+S Extension
- Ex. Eii. P+S First Amendment
- Ex. Eiii. P+S Second Amendment
- Memo prepared by representatives of applicant handed to ZBA at the May 1, 2024, Public Hearing
- Notice of Public Hearing 68 Union
- Application
- Plans – Addition
- Site Plan
- Comments from Board of Health – 68 Union Street
- Notice of Public Hearing – 89 Greenbrook Road
- 89 Greenbrook Application
- 89 Greenbrook Plans
- 89 Greenbrook Road Site Plan
- Comments from Board of Health – 89 Greenbrook Road
- 04.03.2024 Draft Minutes