

HAMILTON PLANNING BOARD
MINUTES OF MEETING
March 6, 2018

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, Bill Olson, Brian Stein (Chair) and Claudia Woods.

Associate Members: Janel Curry and Chris Sheperd

Planning Director: Patrick Reffett

Historic District

Commission: Tom Catalano, Jack Hauck, Stefani Serafini, and Elizabeth Wheaton.

Coordinator: Dorr Fox

The meeting was called to order by Brian Stein at 7:04 pm. in the Memorial Room.

Joint Public Hearing with the Historic District Commission – Demolition Delay By-law.

Tom Catalano showed a power point presentation of the benefits of the By-law. Some buildings were saved and some were demolished despite the range of proposed delays. The proposed By-law asked for a 12 month delay. 150 cities and towns adopted the By-law, most of which were in eastern Massachusetts. Mr. Catalano referred to a letter from David Geike, dated February 26, 2018. The letter was available from Dorr Fox.

Tom Catalano said the Historic District Commission had incorporated many of the changes previously offered by Patrick Reffett, Donna Brewer and the Planning Board. The Commission was trying to establish an expedited process for homes that were not within the small percentage of properties that would meet the criteria for preservation. The determination would be made by staff or the Commission, which would minimize the administrative burden. Mr. Catalano said the fee structure would cover the administrative costs. According to Mr. Catalano, only 5 to 10% of homes built before 1940 would be subject to the By-law.

Brian Stein offered his concern about the 21 day timing to meet with the Historic District Commission before holding a public hearing. Tom Catalano said it would be 14 days for staff to review the application for demolition. Alternatives to the proposed By-law included expanding the limited Historic District or naming specific properties. Naming specific properties would be costly and time consuming.

Brian Stein asked what triggered the By-law. Tom Catalano responded that language would be changed to say that the removal of 50% of the historic fabric would be considered demolition. Mr. Catalano said there would not be much left of the historic fabric after 50% had been removed. Mr. Catalano referred to the Commission's record of allowing every application to replace windows and that the By-law's standard would be lower than the District's.

Peter Clark suggested determining the specific structures that would need to follow the procedures of the By-law. Mr. Clark recalled that Marc Johnson made a list of properties in town that the Town would want to acquire. Tom Catalano said it would be possible if funding were provided for a consultant. The consultant would need to do research and the list would not be static due to the criteria. Mr. Catalano said the By-law would be quick, less discriminatory, and more encompassing as written. A grant could be accessed but would take a couple of years.

Bill Olson asked about if a property met the criteria and was delayed for a year, would it be transferable and if so, how would it be recorded. Tom Catalano responded it would be recorded in perpetuity and that he would check the language. Mr. Olson said he was in favor of the changes.

Rick Mitchell suggested adding language that would allow for modifications such as repairs of roofs, shingles, and windows that would qualify as under 50% of the building. Tom Catalano said he would add language for repairs and maintenance in kind with appropriate material as not constituting a demolition.

Tom Catalano said there were four categories: A. If a building was located within the Hamilton Historic District; B. a building was listed on or in an area listed on the National Registry of Historic Places or was eligible to be listed on the State or National Register of Historic Places, if the building had a preliminary determination of eligibility, the building owner wanted to file for registration, or if the building was determined eligible; C. A building associated with historic persons or events or architectural, cultural, economic, political, or social history of the Town or Commonwealth; or D. If the building was historically or architecturally significant in terms of its building style, method of construction, or association with significant architect or builder either by itself or part of a group of buildings.

Bill Olson suggested incentivizing the process and allowing an owner to move the historic structure to another site and possibly increasing the density as an increased incentive. Tom Catalano thought it was a great idea, but did not think it was the Commission's purview to offer density incentives.

Bill Bowler (Essex St.) spoke in opposition of the By-law. Contractors had told Mr. Bowler that when he sold his 200 year old home, the buyer would demolish it. Mr. Bowler said the By-law would allow his home to fall into a disfavored category of historically significant buildings that could not be sold for 12 months, which potentially gave the Town a 12 month option on the property. Mr. Bowler proposed that if someone needed to go into assisted living, they would not have the time to wait 12 months to sell their home. Mr. Bowler said the By-law was a solution in search of a problem. Mr. Bowler was not aware of any properties that had been torn down that caused weeping due to their historic nature in 30 years. Tom Catalano responded if any owner was anticipating a potential sale, they could file for demolition immediately. Mr. Catalano thought Mr. Bowler was underestimating the normal real estate process, which he said was a

multi-month process. The net increase was less than 12 months in time. Richard Boroff suggested having people who were interested in selling their house, file to determine if they were applicable and have the determination recorded. Mr. Catalano would speak with Donna Brewer about the possibility but thought there would be nothing that would preclude an owner from doing it.

Bill Dery (Chebacco Road) spoke in opposition and thought the Commission should file with the Community Preservation Committee (CPC) for funding to compose a list of sites that would be applicable to the By-law. Mr. Dery did not like the idea of another roadblock for a permit. Mr. Dery suggested preserving historic properties in a positive manner rather than indirectly, which put a burden on people. Richard Boroff agreed with Mr. Dery but Mr. Catalano did not think it was an eligible use of funds.

Jay Burnham (21 North St.) was conflicted as he wanted to see historic preservation but was also a realtor who was concerned with private property rights. Mr. Burnham referred to the 5th Amendment and described the proposed action as one that was a taking of private property. Mr. Burnham considered the delay a 12 month taking as the owner could not use their property. Mr. Burnham asked if a tax abatement would be offered for the delay period. Mr. Burnham noted the additional insurance costs of a vacant property as well as prolonged finance and mortgage costs. Mr. Burnham was also concerned about disclosure and the issues related to a realtor listing a home before it was determined to be subject to the By-law. Dorr Fox had a list of about 150 properties that might be subject to the By-law. Mr. Burnham asked about the appeals process.

Tom Catalano pointed to the map of towns with approved Demolition Delay By-laws and noted that it was constitutional. The appeal process was spelled out in the By-law. If not resolved through municipal appeals, the owner could go to Superior Court. Jay Burnham said the By-law would affect local builders disproportionately to a better financed developer and that six months would be an appropriate timeframe.

Brian Stein said the delay period was not to convince an owner to do something, it was about finding a person to take the building and move it. Tom Catalano added that it would give time to look for alternatives for demolition. Claudia Woods suggested having the Commission direct the owner or buyer regarding options. Mr. Catalano responded that the Massachusetts Historic Commission had a massive list of preservation communities willing to help. Mr. Catalano said the house did not need to remain in its entirety but could be repurposed to preserve the architectural fabric. Discussion ensued regarding someone demolishing 49% and returning at a later time to demolish another percentage. Mr. Catalano said language could be developed that would specify an amount to be done over subsequent applications. Two buildings had been demolished in the Historic District and another that might have qualified under the By-law.

Jack Hauck said he wanted to maintain the character of the town that so many people in Hamilton cherished. The By-law could be better but Hamilton should follow the lead of the

other towns and get started to preserve the town. Claudia Woods wanted to see a latitude for an emergency hardship situation. Tom Catalano would work on language for determination being transferable and permanent, address the maintenance and replacement component, subsequent permits clause, and density.

Motion made by Bill Olson to close the Joint Public Hearing for the Demo Delay By-law for Historic Construction prior to 1940.

Seconded by Peter Clark.

Vote: Unanimous in favor.

Public Hearing to Remove the Conservancy District from the Hamilton Zoning By-law.

Bill Olson read the public hearing notice. Brian Stein noted that Mark Bobrowski thought the By-law was illegal. After research, the Planning Board determined that the Conservancy District was developed to protect wetlands by Charles Elliot before the Wetlands Protection Act was put into place in the early 1970's. The Conservancy District was delineated on the Town's Zoning map and gave elevations. The Town accepted the State Wetland Protection Act with their jurisdiction being anything within 100' from and including the wetlands. Floodplain Districts were also regulated by the Federal, State, and Town government. Donna Brewer had reportedly reviewed the By-law and came to the same conclusions as Mark Bobrowski, noting it was vague and illegal. The By-law did not give direction to the ZBA as granting authority. Ms. Brewer had opined that a resident would need to have at least one use by right on a property rather than by Special Permit, which was what the By-law did.

Brian Stein displayed an overlay map of the wetlands, floodplains, and the Conservancy District, which had a near match. Peter Clark noted that the wetlands were not static and a new wetland line needed a determination every three years. Mr. Stein responded that a court would find that the By-law removed property rights. Mr. Stein said the wetlands map was more conservative for the protection of wetlands. Patrick Reffett added that the Wetlands Protection Act surpassed the land area of the Conservancy District, was far superior to anything that could have been prepared in 1965, and served every city and town in the Commonwealth.

Reffett continued to say that Town Counsel Donna Brewer and Zoning Attorney Mark Bobrowski had reviewed the language and reportedly said it did not provide tangible measures with which to allow the ZBA to evaluate the properties. However, the MGL Wetlands Protection Act was written in an engineered fashion. Bill Olson reiterated that two outside consultants said it was illegal (in Braintree) and not enforceable. It was argued that the Planning Board owed it to the Town fathers of the 1960's to have a planner determine the reason why vernal pools and wildlife corridors were two of their intents, which the Wetlands Protection Act did not protect.

Rick Mitchell said the residual By-law was redundant and it protected things that could not be defined. Concerns over potential legal costs were discussed. Claudia Woods referred to Town Counsel's letter and noted the uses that were allowed, which Brian Stein said were all exempt.

Zach Peters (Lake Dr.) said the Open Space Committee had discussed the By-law and felt the Town should not remove it but rather allow it to be amended to include the two criticisms offered by Donna Brewer and Mark Bobrowski. Mr. Peters referred to the Groundwater Protection Overlay District and the protection of groundwater quality and quantity. Mr. Peters said wetlands did not vary over time, but that 15 to 20 years ago, the Wetlands Protection Act changed delineation criteria from vegetation to soil types. Mr. Peters asked if the town was losing protection. Mr. Peters said that vernal pools were not protected but were only approved next to surface waters. Mr. Peters mentioned the pesticide act.

Zach Peters said other towns had a Conservancy District and that determining what would be protected would be an easy cure. Rick Mitchell said it could be cured, but it was up to a citizen group to come to the Planning Board with why it was important and how they would fix it. Claudia Woods said she wanted someone with environmental knowledge to render an opinion before it was deleted.

Heidi Clark (Porter Lane) said she lived across the wetlands from the original writer of the Conservancy District By-law. Ms. Clark referred to the concept plan presented by Michael McNiff for that property and that the Conservancy District line that protected more than the 100' no disturb zone was drawn around vernal pools and wetlands. Ms. Clark said one of the reasons a significant portion of the eastern side was protected and that Mr. McNiff needed to cluster the proposed development was the Conservancy District. The most recent proposal had the Conservancy line within the 100' buffer zone, which allowed for a whole forest to be cut down, which would have been protected with the original Conservancy District line. According to Ms. Clark, the Wetlands Protection Act did not protect the species that breed in the vernal pool but lived 750 to 1,000' from the vernal pools. If the forests were felled, the species would die. The Conservancy District included more than the 100' thereby protected the species. Ms. Clark said it was a concrete reason to keep the district.

Brian Stein said the Master Plan created the district by an elevation line in the 1960's. Patrick Reffett recalled that Town Counsel had advised the Planning Board, but Peter Clark responded that legal advice was not the protection of habitat and asked Mr. Reffett to look at other towns with Conservancy Districts. Mr. Reffett cautioned the Planning Board that the By-law was imperiling the community because two lawyers had opined that case law said it could not be supported due to the lack of clarity. Claudia Woods disagreed. Mr. Stein said the legality was the reason why Mark Bobrowski rewrote the Zoning By-law, but did not change this section as it was a substantive change.

Rose Kennedy said if the Conservancy District were removed, it would affect other By-laws. There were 196 communities that had stricter By-law regulations because the Wetlands Protection Act did not do all things, according to Ms. Kennedy. Claudia Woods suggested postponing the decision until the fall. Rick Mitchell said it was not a priority for the Planning

Board to invest time or money and if the Open Space Committee wanted to take it on as an issue and come back with a proposed rewrite or amendments, that would be acceptable as long as defining what was being protected was defined. Patrick Reffett suggested the Open Space Committee work with the Conservation Commission regarding the By-law since they fully understand wetlands science.

Gretel Clark accepted the challenge and wanted to ensure wildlife corridors were kept open. Brian Stein did not think protecting the wildlife corridors would happen on a large scale, but rather case by case such as wetland delineation. Ms. Clark said she would determine the reasoning behind the original By-law. Mr. Stein said he thought it was fair to give the Open Space Committee some time to come back with something.

Motion made by Brian Stein to close the public hearing regarding removing the Conservancy District from the Hamilton Zoning Bylaw.

Ed Howard seconded.

Vote: Unanimous in favor.

Motion made by Claudia Woods to not remove the Conservancy District section from the Zoning By-law at Annual Town Meeting.

Peter Clark seconded.

Vote: Unanimous of voting members in favor (Bill Olson having left).

Other Board Business/Discussions

Meeting Minutes.

Brian Stein made motion to approve the minutes of February 6, 2018 with a minor change.

Seconded by Rick Mitchell.

Vote Unanimous in favor.

Adjournment

Motion to adjourn made by Richard Boroff.

Seconded by Rick Mitchell.

Vote: Unanimous to adjourn at 9:31 pm.

Prepared by:

Marcie Ricker

Attest

Date