

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
April 24, 2018

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

Associate Members: Janel Curry and Chris Sheperd.

Planning Director: Patrick Reffett

**Approval Not Required 103 and 105 Linden St. Application to create two undersized lots from an existing lot.**

Patrick Reffett said the Board had previously approved the plan on August 1, 2017 and offered the minutes of when the plan was presented. The undersized lot required ZBA approval (and achieved that) and the lots were grandfathered as the houses were created prior to zoning. The original plans were not full-sized but had been redrawn on a mylar so the Board could sign them for recording purposes. The mylar was provided and signed.

**Public Hearing 46-46 Winthrop St. Definitive Subdivision Plan. Franz and Susanna Collerado Mansfield.**

Brian Stein opened the public hearing by reading the legal notice which had been posted in a local paper and at town hall. The proposal was to reform three existing lots. No new lots were being created in the RA zoning district. Surveyor Paul Donohoe and Engineer Larry Graham had drawn the Form B application for a Definitive Subdivision. The property was in the Groundwater Protection Zone II and RA zone. All three lots were on a private way with two of the lots having dwellings on them. The purpose of the division would be to eliminate a portion of the private way that was not constructed and reconfigure the lots to meet zoning regulations. The private way developed over time, beginning with a plan, dated 1/21/70, that had a 1,645' long private way, which was approved by the ZBA and the Planning Board. A plan, dated 6/30/95 extended the private way by 887'. The plan was endorsed by the Planning Board as an Approval Not Required Plan. 425' of the private way was never constructed. The Collerado Mansfield family wanted to delete the unconstructed way and construct a suitable turning radius area at the new terminus of the way. The new length would be 2,107'. The extinguished portion of the private way would be shown as parcel C on the plan. Lot 6-5 had a garage on it and was under a conservation restriction. Larry Graham designed the 120' turn around design and a simple expansion of existing driveways. No trees or wetlands were affected.

Patrick Reffett said it was a positive when property owners made their property more conforming with zoning and improved fire department access. Mr. Reffett said he had received positive comments from departments and urged the Board to accept the plan. There were no changes made since the preliminary plan was presented.

Motion to approve the plan as presented made by Ed Howard.

Richard Boroff seconded.  
Vote: Unanimous in favor.

**Board Discussion with a Selectman regarding the Varsity Wireless Special Permit at 577 Bay Road. The Special Permit was not approved by the Supermajority.**

Brian Stein said he had received an e-mail from Allison Jenkins requesting a discussion. Scott Maddern was present to represent the Board of Selectmen as Ms. Jenkins was unable to attend. According to Mr. Maddern, the Board of Selectmen wondered what was missing from the original application and wanted to discuss ways in which the missing information could be provided. Mr. Maddern referred to the approved cell tower at Asbury St. and asked what the difference was, including technical data or site evaluation.

The history of the application was reviewed by Patrick Reffett. In 2013, it was noted that there was an absence of cellular service in Hamilton. The Board of Selectmen had tasked the Town Manager to pursue better service. While the Town pursued private properties, property owners did not want to sell or lease space. The Town Manager decided to focus on Town owned property as many properties at the time were being researched for affordable housing and most properties did not meet the zoning setbacks, which predicated how the RFP was delineated for the two sites. In late 2015 / early 2016 an RFP was issued for a competitive bid with various cell tower developers responding. A vendor was chosen who would come forward with the most lucrative offer which included payments of up to \$500,000 for a 10 year period and a one-time payment of \$27,000 to the Town. Town Meeting approved the selection and authorized the Town Manager to execute a 30 year lease. The Town Manager engaged Varsity Wireless with the lease, which was prepared by Town Counsel Donna Brewer and Varsity Wireless attorneys.

Reffett continued the report by mentioning the Varsity pre-application was received by the Town in early 2017, a full application was received in May 2017, and a balloon test was conducted in mid-June 2017. The Planning Board entertained the special permit process officially on June 20, 2017. Hearing notices were duly posted. Four members felt the application was appropriate while three members did not. There was not the required supermajority needed, which was a State law relative to special permits. The discussion would determine if there were gaps that could be reasonably attained to move forward.

Reffett advised the Board that the Federal Telecommunication Act of 1996 was similar to a 40B for cell towers if areas didn't have cell service in that Federal law allowed providers to erect towers in the area of missing service. Maps of missing service gaps had been provided by Varsity Wireless. The private cell tower at 434 Asbury St. offered a fair amount of service but only carried service to the west side of Route 1A. The new tower would provide service east of Route 1A.

Peter Clark asked if Scott Maddern read the reasons for the vote because Allison Jenkin's memo was answered on August 1, 2017 regarding why the application was deficient. Mr. Maddern said

he had read it and it was not clear. Claudia Woods said the letter delineated what the By-law said and what was required. The By-law specified that cell towers would be designed and available for co-location if one or more existing structures could not accommodate them on the same tower. A technical evaluation of other sites, which did not have a more significant impact than the proposed facility was absent. It was noted that the Gordon Conwell steeple had four carriers with ATT with no problems or prohibitions. The reservoir property on Brown's Hill, which was next to the steeple and John Piries' property next to the cemetery (non-deed restricted section) should have been considered. The minority members agreed that two properties were suitable alternatives to the land next to the Historic District. Ms. Woods wanted technical evaluations of the sites.

Scott Maddern said Varsity wanted space for large equipment which would not fit in the steeple at Gordon Conwell. Mr. Maddern asked if the Board wanted an assessment of the properties at Brown's Hill and the town property of the cemetery. Claudia Woods said to obey the Bylaw would be to look at alternative sites. Patrick Reffett said the RFP directed the applicant to look at the two town owned sites. Ms. Woods said the applicant should look at alternative sites and do technical evaluations. Brian Stein said there was a list of fourteen sites that were looked at. Rick Mitchell suggested being specific as to which sites the applicant should look at for this application. Peter Clark said the applicant shall describe the role of the facility demonstrating the need for the proposed location with a technical showing including illustrating cell coverage from existing or other proposed locations in the district. Mr. Clark said the applicant did not show signal strength. Others disagreed stating the information was part of the application.

Richard Boroff said the applicant showed a map from the Asbury St. site and the rest of town which had no coverage. If there was coverage from Ipswich, Manchester, or Wenham, the map would have shown it. Chris Sheperd noted the gap between the steeple and Asbury St. and the two sites helped out Wenham rather than the north end of Hamilton. Claudia Woods recalled that the site evaluation for Blue Sky (Asbury St.) was different than the Town Hall site with Varsity as it included hard data. Brian Stein responded that Blue Sky did the exact same thing as Varsity Wireless. The applicant did a real estate radius and found a property that was willing to lease the land to them. Rick Mitchell referred the coverage map in the Varsity application to members showing the coverage.

Patrick Reffett said the Town Manager had chosen the two sites that met the Zoning criteria for cell tower setbacks which were also within the zones that did not have service. Claudia Woods asked why the Pirie property was not considered. Brian Stein responded that there were thirteen properties that owners would not lease the land. Janel Curry asked if the application was the same as Blue Sky would the three minority voters accept it. Ms. Woods responded that the application was deficient relative to the By-law as technical evaluations were missing on alternative sites. Ms. Woods said Blue Sky respected the By-law. Peter Clark referred to David Maxson who did acceptable analysis of radiation at different levels at different towers, noting the steeple at Gordon Conwell and the Wenham church, which were all existing. A comparative

analysis evaluated signal strength. Rick Mitchell said the analysis was done for a neighbor's concern and was not done for all towers in town. Varsity Wireless needed to do what was acceptable to their primary tenant, Verizon.

Claudia Woods and Peter Clark agreed that technical evaluations of three to four sites including Brown's Hill, the cemetery and a co-location site would be acceptable. Ms. Woods would send the list of sites to Scott Maddern.

Dave Thompson (Essex St.) recalled that he had met with the FinCom and Board of Selectmen representatives to negotiate with Gordon Conwell regarding PILOT. Gordon Conwell used \$1M worth of services and asking for a cell antenna on the site either in the steeple, reservoir, tennis court, dump or on the hill was being considered. According to Mr. Thompson, one would believe up on the hill, would provide improved cell service to Hamilton. Peter Clark said David Maxson had indicated that Gordon Conwell was the best location for a cell tower.

Brian Stein said the application in front of the Planning Board was for the rear Town Hall property and that Gordon Conwell was not an option at the time. Mr. Stein reminded the Board of the lawsuit in front of the Town. Peter Clark agreed to present the three to four alternate sites, but Richard Boroff responded that if the towers existed, Varsity would have presented the information that they did not work. Rick Mitchell said the map showed existing and approved cell tower sites that did not provide coverage to provide need in the space. Mr. Clark said the map did not show Gordon Conwell. Mr. Mitchell wanted to ensure that the list of three to four alternative sites were not already considered by Varsity Wireless.

Richard Boroff said Varsity had clarified that the steeple at Gordon Conwell was not adequate for the kind of coverage needed (4G and 5G service). Peter Clark said there were locations on the Seminary property other than the steeple. Richard Boroff asked how long it would take for Gordon Conwell to provide space for PILOT. Dave Thompson responded that it was an annual payment and that he had a letter from Gordon Conwell saying there was space in the steeple. Mr. Boroff said the steeple was out of the discussion.

Chris Sheperd asked Scott Maddern about the potential scenarios for the lawsuit, noting that if the Town could fight the lawsuit and win, they would still have legal bills, which was what the Town of Oxford was experiencing with Varsity. The situation would also eliminate the \$500,000 in revenue over the next ten years. There would be no cell coverage. Another scenario would be to lose the lawsuit and still have legal fees but have cell coverage. Mr. Sheperd said the Selectmen had asked for the Board to come together and determine what information would be needed to stop the case from going to court. Mr. Sheperd hoped for the last scenario. The last option would be to determine if the Seminary would find a location suitable for Varsity Wireless.

Scott Maddern advised that the Town could not be successful in the lawsuit and would lose revenues and have coverage gaps. The Town had an antiquated cell tower By-law that prevented

cell towers but then changed the By-law to accommodate them at Town Meeting in 2015. The message Mr. Maddern received was that the applicant needed to look at other sites and present an application similar to that of Blue Sky showing existing cell towers and gap coverage. Mr. Maddern said Federal Court did not want parties fighting.

Claudia Woods recalled that it was determined that a Gordon Conwell site was too politically complicated at the time of the Varsity application. Brian Stein said a tower was more complicated than the steeple.

Patrick Reffett said one goal in the Zoning Bylaw which was overlooked in the correspondence from the three members was to encourage the location of towers on municipal land. Mr. Reffett said Varsity had hit that goal dead center they located their tower in a service gap area as well as being sited on municipal land. Mr. Reffett added that obliterating the goal would mean to defy the Zoning Bylaw. Ms. Woods responded that it would also be a goal to have the least adverse effect to the community and that looking at all conditions would not obliterate it. Mr. Reffett said there were few towers in town, which was exactly why the Varsity project had space for multiple carriers on their proposed tower. Ms. Woods said it was to have more income. Janel Curry was concerned about public safety and noted the need for three towers, Asbury St., the public safety building, and Town Hall. Ms. Woods responded that it would be nice to have one tower at Brown's Hill that would cover the entire town. Mr. Reffett said the tower would need to be 200' tall. Ms. Woods said the application did not include the 200' elevation.

Claudia Woods would send the list of three to four properties to Scott Maddern and Patrick Reffett. In relation to Dave Thompson's comments, Mr. Maddern said the Board of Selectmen had not constituted a charter for anyone to talk to Gordon Conwell and the committee was not sanctioned by the Selectmen. Jeff Hubbard and Allison Jenkins were to speak with Gordon Conwell but it was Mr. Maddern's experience that it would be a long time for any change. Mr. Maddern wanted to know what the objectives were and how they could be solved.

### **Other Board Business and Discussion**

The permanent member vacancy was discussed. Bill Olson was elected Selectmen leaving a vacancy. The Planning Board would vote to approve someone and the Selectmen would also approve the candidate. The Board agreed that typically they appointed the associate member who was first. Patrick Reffett determined in meeting minutes that Janel Curry was the first associate member to submit her information even though she and Chris Sheperd were appointed on the same night and that Ms. Curry was voted first at the August 1, 2017 meeting.

Motion made by Rick Mitchell to appoint Janel Curry as a full Planning Board member.

Seconded by Richard Boroff.

Vote: Majority in favor. In favor 4, opposed 1, abstain 1.

The Board discussed electing a new chairman and clerk.

Rick Mitchell nominated Brian Stein as Chairman.  
Richard Boroff seconded.  
Vote: Unanimous in favor.

Richard Boroff nominated Rick Mitchell as clerk.  
Seconded by Janel Curry.  
Vote: Majority in favor. In favor 4, opposed 1, abstain 1.

Minutes from March 6, 2018. March 20, 2018 and October 22, 2016.  
Only three current members were present at the October 22, 2016 meeting. Donna Brewer would be contacted regarding the approval. Other minutes would be approved at the next meeting.

**Committee Update**

Ed Howard updated the Board regarding the CPC and noted unanimous votes versus majority votes and why a member should vote nay rather than abstaining.

The Board discussed the solar field application at 300 Chebacco Road. The proposal was in a residential zone. The ZBA would review the proposal the first Wednesday in May. Reffett reported that there were no provisions for a solar facility in the By-law, which should be addressed as we revise the zoning bylaw. The Building Inspector was also concerned about pool placement in front yards of homes which may not be an issued on large properties but likely would be on smaller lots.

**Adjournment**

Rick Mitchell made motion to adjourn.  
Seconded by Brian Stein.  
Vote: Unanimous to adjourn at 8:50 pm.

Prepared by:

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Marcie Ricker

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Attest

Date