

DRAFT
HAMILTON ZONING BOARD OF APPEALS
MINUTES OF MEETING
May 3, 2023
7:00 p.m.
Hybrid/Zoom Meeting 835 9057 1007
Passcode 319584

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

Others Present: Patrick Reffett and others as noted in the meeting.

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

PUBLIC HEARINGS:

21 Blueberry Lane. Special Permit for an accessory apartment. Nathan Smith, owner.

The applicant was not present. The matter would be continued until June 7, 2023.

264 Bay Road. Variance. Construct a studio apartment with office space behind a structure used as a business. Brian Stein, applicant, Mingo Springs, LLC, owner.

The applicant withdrew the application.

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

The petitioner requested a continuance until June 7, 2023.

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.

Special Counsel, George Pucci (KP Law) was present via Zoom. The Housing Appeals Committee had received an Appeal for conditions of the Decision. An initial conference was held between the parties and their attorneys and the presiding officer from the Housing Appeals Committee. The revisions would be presented in the form of a modification and a finding of insubstantial change. The matter could have been discussed in Executive Session, but Attorney Pucci suggested the meeting be held in open session.

The time limit for a decision had not yet started as the applicant's attorney had agreed to let George Pucci counsel the Board on the process. Once the time started for the deadline to respond to the request for insubstantial change, the applicant would present the proposed project change, and the Board would have 20 days to make a determination as to whether the changes were substantial or insubstantial. Discussion would ensue during a public meeting. If the Board determined that changes were insubstantial, the changes would automatically be included in the modification of the Comprehensive Permit. If the Board determined that the changes were substantial, the Board would be entitled to a public hearing on the proposed changes. The applicant had the ability to appeal the determination to the Housing Appeals Committee. The

Housing Appeals Committee would issue a ruling as to whether the changes were substantial or insubstantial. If the Board disagreed with the ruling, the Board had the opportunity to appeal the decision in a court action.

The proposed changes were presented in the track change version of the permit provided to members of the Board. The Housing Appeals Committee stayed the appeal for the time being and set up a status conference after the next ZBA meeting. George Pucci recommended looking at the proposed changes. Language could be amended subject to a vote at the next meeting. Attorney Pucci would advise the applicant's attorney to start the timeframe for a decision.

Bill Bowler suggested having a discussion about the changes. If changes were acceptable, the Board could determine how many changes were appropriate. The Board would vote upon what had been decided at the June meeting. George Pucci highlighted the provision about the applicant contributing money for the sidewalk and agreed that having language regarding ensuring having the sidewalk constructed was an issue. Another condition was in regard to blasting, which could be concerning.

- Section 5.A.1 included a change in the proper reference to a condition. No comments heard.
- Section 5.A.2 included a change from 60% to 80% of median income. The Board would like more explication.
- Section 5. included a change with no issue.
- Section 5.A.7 included a change regarding local preference. No comments heard.
- General Conditions 6 included a change to the ownership entity, including profit entities. The affordable requirement would remain in perpetuity. Members discussed the possibility of having a profit entity purchasing an affordable project and allowing it to deteriorate in an effort to increase the profitability. Patrick Reffett said the majority of investors would want to upkeep their property. Members were skeptical on the change but it was not a critical issue.
- Section 13 included a change regarding antennas and the inclusion of the Town of Hamilton being able to construct antennas. No comments heard.
- Section 18 included a change regarding erosion and sedimentation control items. The applicant wanted to add language regarding NPDES. No comments heard.
- Section 19 included a change similar to the language for Section 18. No comments heard.
- General Conditions Paragraph 29 included a change regarding blasting. The applicant wanted to add a provision that the if the engineer determined blasting was required, the applicant would be allowed to blast in accordance with State Law. Bill Bowler did not agree with the change and members agreed that the applicant should work around the site conditions. Members discussed what would happen if blasting was required. George Pucci would tell the applicant that members were skeptical. Attorney Pucci said if blasting was required, the applicant could return to the Board to seek approval.
- Section C - Conditions prior to the issuance of a Building Permit included a change that no construction may begin under the building permit until the execution and recording of the regulatory agreement and subsidized funding commitment. The regulatory group needed the permit to be signed. Members agreed.

- Section D.2.– Conditions prior to the issuance of a occupancy certificate included a change regarding landscaping. The applicant requested that occupancy be based on landscaping being limited to adjacent places. The word adjacent had not been defined. Bill Bowler wanted to make clear that the landscaping on the east property line (Canterbrook) was included as adjacent. Members agreed that keeping the screening of Canterbrook was important.
- Section D. 4. - Conditions prior to the issuance of an occupancy certificate included a change regarding clarification of the language regarding a general contractor’s bond. George Pucci cautioned that not agreeing with it would lead to it being overturned.
- Section E.2 - Special Conditions included a change regarding the dumpster. Language had been changed to accommodate for special circumstances such as unit move outs and move ins. Pickup would be on a once per week basis. Members agreed.
- Section E. 2 - Special Conditions included a change in regard to paying for a sidewalk contingent on the full sidewalk project being constructed and Canterbrook agreeing to pay their fair share. The applicant would pay their \$172,058 obligation. Bill Bowler said Canterbrook would not contribute. George Pucci would draft specific language regarding the applicant’s contribution only if a sidewalk was built. The applicant only wanted to contribute if there was a sidewalk constructed. The issue would be discussed at the June 7, 2023 meeting.

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

To be discussed in the future.

REGULAR BUSINESS

Minutes

Motion made by David Perinchief to approve the minutes of April 5, 2023.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

DOCUMENTS DISCUSSED

Conditions within the Comprehensive Permit Decision at 466 Highland St.

ADJOURNMENT

Motion made by David Perinchief to adjourn at 8:13 pm.

Seconded by Bruce Gingrich.

Vote: Unanimous in favor.

Respectfully submitted as approved at the _____ meeting.

Bill Bowler