

Town of Hamilton
Planning Board Meeting
Tuesday, September 8, 2020 7:00 PM
VIA: ZOOM

Present: Travis Dubois, Mary Galvez, Michael Welshko, Bettyann Miller, Town Clerk Sue Reymers, Deputy Town Clerk Elisa Robertson, CEO Mark Miller, Alternate Kathleen Palmer

Absent: Elaine Hughes due to technological difficulties.

Others: Allie Dunham, Drew Dunham, Mike Dunham, and William Heitz, esq.

7:09 pm Chairman Mike Welshko reads into the record the guidelines for a Zoom Meeting. All audience members will be muted by the host, if you have questions or comments please use the chat feature and your comment will be recognized by the host. Inappropriate or disruptive behavior will be cause for removal. After the meeting questions and comments can be sent to the Clerk or Deputy Clerk and will be addressed.

Chairman Mike Welshko calls the meeting to order.

With the absence of Elaine Hughes; Kathleen Palmer will be sitting in as the alternate. There is no old business on the agenda for this meeting.

Resolution 2020-18: Motion to approve the Planning Board Minutes from May 12, 2020.

Motion: Travis Dubois

Second: Bettyann Miller

Vote: YES – 4 NO - 0

ADOPTED

New Business:

Dunham Heritage Barn; Update; 1647 Poolville Road; Tax Map # 184.-1-35,36,37

Chairman Welshko confirms with Ms. Allie Dunham and the Deputy Clerk confirm that the tax map # of the parcel that will be used for the outdoor ceremony space is #37. Town Clerk Reymers brings the application up on the screen so that everyone can see it. The original special use permit was issued in November 13, 2017. Chairman Welsko reads the applicant's narrative for the board and audience.

The applicant has had numerous requests to have outside ceremonies due to some religious beliefs and the additional safety guidelines due to COVID-19 they are requesting an amendment to their Special Use Permit to include hosting vow exchange/ceremonies within a designated ceremony lawn. They would like to implement this in an effort to ventilate, better social distance, spread events out and get people outside the fresh air with the main goal of promoting safety. These vow exchange ceremonies will not be of a disturbing nature and would

have minimal moderate music for walking down the aisle. These will take place during waking hours and the sound levels will not exceed those outlined in the sound study previously conducted for the original permit. The ceremony lawn is not visible to nearby neighbors. The plot of land where the ceremonies are to take place is included in the original application, however it is not part of the site plan. The applicant has included some sample set up photographs. There are no structures in the area, it would be free standing.

Chairman Welshko and the board agree that they would like to see more detail on the proposed use and on the site plan itself. It is recognized that the general public will want to know, more specifically, what's going to take place outside because right now; it kind of depends on everyone's individual understanding of what a vow exchange/ceremony would be, and that could be very different, depending on one's perspective.

Ms. Allie Dunham explains that, everyone would come to the barn, park in the designated parking spots that they have outlined on their site plan for the event barn. Then they would walk across the lawn of the hop house, right over to the ceremony lawn. The ceremony would take place. It will be like the traditional ceremony where chairs or benches, or something of that nature are lined up. There is an altar. It will be a couple getting married with their wedding guests, probably one song as they walk down the aisle. They will exchange vows. There may be a cheer here and there at the end and then everyone will walk back to the barn. It will be very regimented they will arrive at the ceremony lawn, have the ceremony, and then go back to the barn. There won't be a party outside, there won't be any sort of other gathering out in the lawn or anything. It will be just for the ceremony; for people to come and go from the barn, or from parking to the ceremony and then back to the barn. It would be pretty quick.

The board members have some questions:

Board member Mary Galvez: With the maximum number of people be 300 the same as the barn.

Ms. Allie Dunham answers yes.

Board member Bettyann Miller: "Would there be a designated area for passage from the barn to the ceremony site and then back to the barn? Is that something that we should be asking for?"

Mr. Mike Dunham replies that is a great idea, and they would probably have some kind of designated walkway, so that they could control everything.

Chairman Mike Welshko: "And there's no anticipated use of the roadway into the hop house?"

Mike Dunham: "That would be correct. We would have two choices. We could route them around behind the hop house, there's a pathway there which may end up being the better way to go, or they would just go directly from the barn across the front lawn of the hop house straight out to the ceremony lawn.

There is continued discussion about the driveway to the Hops House and blocking that driveway off.

Board member Mary Galvez asks about the accommodations be for handicapped?

Mr. Mike Dunham explains that there's nothing that would prevent a wheelchair from being rolled out there, other than the terrain, but there are no steps or there's no change of grade it's anything significant it's almost flat completely level straight across.

The board agrees that they would like to see a revised site plan to include more details about the ceremony area that includes the existing barn, the existing parking, the designated walkway path, and the ceremony lawn and the spatial limits of the new activity.

Board member Mary Galvez asks if they are considering any kind of screening or anything like they had talked about on the other side of the property.

Mr. Mike Dunham: "You know, I really, I understand all the procedure and protocol. Um, I would just add that we have invested in an incredible amount of money in this project and we've done many gyrations and variations of site plans; and we went through the county, and the whole process took us a year. And I don't know that what we're... I'm not being argumentative. I am just saying that this is another long process of getting somebody to draw plan then submit a plan. If we are only talking about a lawn. There is not going to be any planning. So, you can't see it from the road or the neighbor's house. And it's just a lawn and it's clearly designated as an area, not with any specific square footage. I mean, If it's 30 people will have 30 chairs, if it's 60 people have 60 chairs. It is right on the lawn in a designated area and I mean... to spend thousands of dollars to get a plan to show a lawn. I'm just, it's a lot..."

"We're trying to do this now, for this fall, for COVID to help because of the limits that we can have in the barn. If we have the ceremony outside. We can then better separate the tables on the inside of the barn, and it is just a safer situation. So, we are hoping that it doesn't drag into another two or three meetings. Although if that's what you're actually requiring we're more than happy to do it because, ultimately, this is a big part of what we're trying to do and a lot of the different barns that we've studied and a lot of the different brides input has strongly suggested an outdoor ceremony in this kind of a beautiful countryside is you know, desirable. We are just trying to make a better venue with more options and make it safer. I don't know when this COVID thing is going away so that it just makes a lot of practical sense to us and hopefully you all feel the same way."

There is some discussion of the grounds, the plantings and the hedgerow, the number of trees, how far set back the ceremony lawn will be, and the screening that is already in existence.

The board is requiring a new site plan because of the change of use. To add this new use, there will have to be a public hearing. The public is going to want to see, without confusion, or without people making their own interpretation exactly what is being proposed. It is suggested that they could take this existing site plan that they already have and just modify it to include the Ceremony Lawn to also include the existing plantings, dimensions, etc.

The applicant expresses their desire to abide by the regulations and contribute financially to the area. They articulate that are trying very hard to honor their neighbors wishes and control things and not be of any type of disruption.

The board reiterates that they require an all-inclusive site plan to show that they have done their due diligence and it will help clarify any ambiguities for any neighboring residents that have questions. That protects the applicant as well when it becomes a matter of record. The board reviews the conditions that were put in place at the time of the original approval to see if there is a plan for any other changes or modifications. The applicant acknowledges and agrees that there are no changes or modifications until #4.

4. All event activities will be held inside the venue (Heritage Barn) other than incidental activities that are reasonably related to the event that will not cause a disturbance or create a crowd, for example: photos, carriage ride.

Chairman Welshko: "Obviously, that's a major change. And that's why I feel we need to go to a public hearing because the public is under the understanding that this venue will be an indoor venue at the present time, under the existing special use permit."

Mr. Mike Dunham states that he agrees with everything that's been said, he also agrees that there would be no changes to #5 which states that there will be no alcohol outside. He does contend that there may be alcohol on the "deck", also called the Warfin, (it was built for exiting) sometimes, but that he believes that is part of the barn.

It is determined that # 8 was amended to extend the time until their start date because they needed more time to finish preparations. There is no anticipated change in #9 that has to do with complying to the limits set by the sound study that was previously done.

Chairman Welshko clarifies, "The major change will be going from a totally indoor venue to venue with both indoor and outdoor (activities)". He invites the other board members to speak if they wish and continues to state: "I think we need to go to a public hearing, and we need a site plan that shows specifically and a little bit better description of exactly what's going to go on outside because...I anticipate that we will have people at the public hearing and we need to be able to answer those questions. If we can't answer those questions, then that's going to cause a delay any action that we can take."

Ms. Allie Dunham: "I just wanted to clarify one thing. With this amendment, where we're asking basically, the only change to this resolution to be that ceremony be included with the incidental (activities) like photos and carriage ride. We're not asking to do events outside. We're not asking to change that aspect, just the only thing would be like a 30 minute to an hour ceremony; not even, actually, because if it's not fully religious. It doesn't take that long. But for that to be one of the additional things that is allowed outside. So, I'm not saying that we're going to host a wedding outside but just the ceremony, vow exchange, exclusively. I just wanted to make you make you guys aware that that's not we're not asking to do everything outside."

Chairman Welshko states that they are having a wedding outside, the reception will be inside and the concern is that this is a change of use according to the plan that they already have a special use permit for. Specifically, different use for the outdoors, the site plan would be

changed and that there is enough in the change of use that it is substantial. "This isn't a minor change like the relocating the handicapped parking spots or the lift. This presents a change of use."

This change is being requested now because the Dunham's are booked to host a couple to get married on October 3rd and they want an outside ceremony. The couple have already had to change their wedding substantially by moving venues and limiting the number of guests, etc. due to Covid.

Mr. Mike Dunham asks if a one-time exemption to the special use permit to allow this outside ceremony is possible. A temporary approval while the rest of the application is being considered. The Codes Officer will be in attendance at their next event to monitor sound and check procedures.

Mr. Heitz states: "Mr. Chairman and members of the board. We appreciate the time are given; I just had a quick question. With respect to this this October 3 date, and I think that we do have a little gray area in the sense that we do have authority to conduct incidental activities, reasonably related to with the event. And this is in fact one of those incidental activities. I understand you may not be able to grant authority, per se, to amend anything without proper protocol, but if we had to test the waters in terms of how the town feels about having this one off incidental activity. Could we get the temperature on that?"

Chairman Welshko states: "I don't know where you're going with that. Are you saying that you're willing to go ahead and risk being found in violation of your special use permit?"

Mr. Heitz: "I appreciate the question, I'm asking to see if I can get your opinion in terms of how you define incidental activities, and if we would be... I know what the plain language says on the resolution."

Chairman Welshko replies: "I think that, based on the public's input at the initial Special Use Permit hearing, and the fact that it says all event activities will be held inside the venue, other than incidental, and the two that are listed are very, very incidental: photos or a carriage ride. Which in my mind is the bridal party alone, not guests, and not any ceremonies."

Boardmember Mary Galvez: "I think just overall. We're in unprecedented times, and you know everybody's making changes daily, you know, to just try to accommodate what's going, on so it wouldn't hurt to ask (the town attorney)."

There is no provision in our laws for a one-time exemption, however the board states that they will consult with the town attorney

Mr. Mike Dunham summarizes that he believes that the biggest opposition to the original permit was the noise, and that if a ceremony takes place outside with little or no noise, that he does not understand why there is an issue. That's why they specifically said, "everything will be in the barn; because of that noise; other than incidental activities that are reasonably related to the event and will not cause a disturbance. So, it's defining that it can't cause a disturbance. So, there can't be any noise. We've already covered the noise. Reasonably related well... A vow exchange is definitely related to a wedding. And there's a couple examples. Now, I'm not a

lawyer, but it doesn't limit it to the photos in the carriage ride. It just says reasonably related to. We're coming forward, you know, as a group, and in cooperation with the Town to say, it would be good if we could get this done because we anticipate, even though it's a very small number of people."

He continues to explain that they have done everything thus far that has been required of them and that they do not want to open themselves up to a violation.

They have hosted two weddings thus far.

Chairman Welshko asks if there have been any complaints and or violations regarding this venue.

CEO Mark Miller states that there have been complaints and that there was a warning letter issued due to 20-25 people being outside. There is video to support the incident. He had previously spoken with Ms. Dunham.

Mr. Dunham objects and states: "Before the reception starts, they are out there taking the view. They didn't come down off that wharfin. Why is that not incidental? You know the activities will be held inside of an incident like can be reasonably related. They're all in the barn, there have a cocktail hour they open the doors to look across the valley and they stand out on that cement thing with the railing that we were required to put in. Okay. Why is that not incidental to and why are and there is nothing I've heard the complaint. There is not one thing legally that requires those doors to be closed. The only reason those doors have to be closed is to mitigate the sound so that we can maintain the sound decibels at the control point. I've gone through this five times. There is nothing that requires the doors to be shut and it's not in the resolution. So, having the doors open is not a violation. I will be sure to tell my neighbors that that is the case."

Chairman Welshko draws attention to the wording of condition number four focusing on the statement "incidental activities that are reasonably related to the event that will not cause a disturbance or create a crowd." He continues on to say, "When we go to the next public hearing to get into these controversial things. That's why things have got to be exactly specifically defined what's going to happen. What's going to take place where. What kind of noise. What kind of activity. It's for your own good."

What constitutes a crowd is briefly argued as well as the noises in the area that are created by agricultural uses, tractors, chainsaws, plows, etc.

Chairman Welshko reminds the applicant that the area is zoned agricultural/residential so any types of ag related noises have no bearing on their permit conditions. It is also recommended to the applicant that they put everything that they want to consider in the application for review before the public hearing. For instance, using the deck/patio (warfin area outside the doors, outdoor ceremonies, and very specific incidental activities.

Mr. Heitz comments that: "I just want to make it very clear. What the law is here, in this particular circumstance; and the law is that if there is a vague term... like the word 'incidental' or a vague term like the words 'create a crowd' those terms are construed in favor of the applicant."

He requests that he be able to have a conversation with the CEO and or the Town attorney before any violation letter is issued.

Chairman Welshko suggests that issue is not with the CEO but with the vagueness of the terms and suggests that for everyone's benefit that they tighten those terms up. For clarification to the applicant, the board, and the neighbors, so that there is no vagueness or interpretation. It may help diminish animosity between the neighbors. There would be clear parameters for all.

Board members Palmer and Galvez weigh in on the issue exploring ideas of how to have a middle ground and expediting the process. Due to legal timelines; the meeting cannot be moved, because of the notification process for both the neighbors and the newspapers. The Board reaffirms that they will meet with the town attorney and see if there is a possible one-time permit.

The board and applicant discuss the social challenges surrounding the global pandemic and that rules and procedures are very quick to change. There is no precedent set for what is happening right now. There have been many requests for outdoor ceremonies recently due to COVID, that is why they haven't come before the board before now, they also had a deadline on another wedding that was not requesting this.

Board member Travis Dubois compliments the applicant on their facility and asks for some clarification of their application.

1. Is the activity itself incidental?

2. The other is the piece of real estate with what they are asking for the ceremony to be on?

"Then we're only talking that what the meaning of incidental activity is. You're not folding in the real estate aspect of it. I think that would make that early determination easier. Does that make sense?"

Chairman Welshko replies: "I think we're constrained legally as to what we can do. Also, you know, we're all speculating here, and I understand what you're saying. Travis, that definitely the use combined with the spatial area does those add some more complexity to it, but I think, we're all kind of wandering around in the dark right now as to exactly what we could do on a temporary basis, we've got to get an opinion on that."

It is agreed that the board will seek counsel from their attorney and get back to the applicant as soon as possible.

Board member Galvez states: "I know that this has been a frustrating process and the last thing we want to do is make it any more difficult for you guys, I agree with Travis, your, your venue is beautiful. You have gone above and beyond to try to you know make this fit within all the guidelines (as much) as possible. But like what Mike (Welshko) said you know there's laws and rules that we have to follow, that we don't have a choice. And one of them is conducting a public hearing and having enough time for that. And so, I think personally. The best thing to do is to try to get some kind of guidance from our attorney."

The applicant reasserts that they want to contribute to the financial security and success of other local businesses in the area. They thank the board for their time and consideration.

The board decides that as a fallback that they should schedule a public hearing to keep the application moving forward. They request that the applicant submit a more specific description of what will be going on in the ceremony area. A site plan revised to show use of the outdoor deck area. They are urged to make their application and narrative as detailed as possible. There is some discussion of changing the date, but due to scheduling conflicts, time limits for advertising, the date of the already scheduled meeting is the earliest it can be held. The applicant is urged to get their materials in to the town office as early as possible so the board has a chance to review them; and also formulate any questions that they may have.

There is discussion about what brides and grooms are looking for, style-wise, and that many are asking about outdoor ceremonies. The applicant is looking for this to become a permanent part of their regular offerings at their venue.

Deputy Clerk Robertson will send an email to the town attorney as soon as possible to set up a meeting. Times are discussed.

Resolution 2020-19: Motion to schedule a public hearing regarding the Dunham application, for Tuesday, October 13, 2020 at 7:00 pm via ZOOM.

Motion: Mary Galvez

Second: Travis

Vote: YES – 4 NO - 0

ADOPTED

Chairman Welshko asks if anyone on the board has any more questions, there are none. The applicant asks for some guidelines as to what, exactly, the board wants to see. There is discussion about the site plan, narrative, uses, music, sound, time limits, etc. The board does not want there to be any ambiguity for the applicant, the board, the CEO, or the neighbors. The applicant is working together with many local vendors and is excited about stimulating the local economy. They invite the board and staff to visit the barn and take a tour.

The applicant is reminded that all materials are due by Thursday, October 1, 2020 at 4 pm.

Deputy Clerk Robertson informs the board of an upcoming subdivision application with a brief description. It is basically a property line adjustment. It is two neighbors, they are going to transfer some property, between the two of them. It is not going to be contested, nothing out of the ordinary. However, the one neighbor is planning on selling his property. The applicant wants to get it moving as quickly as possible. They are hoping to get this accomplished in one meeting if possible. The applicant is selling their land. When the property lines were drawn on the survey it was discovered that their property went right through the neighbor's shed. The

applicant needs to adjust the property line for the shed and the setbacks. The structure cannot be moved. It also helps the property that is a nonconforming lot gain the land and will help it get it closer to being a conforming lot of one acre.

The board has the discretion to waive the public hearing if they wish. Due to the fact that this is between two neighbors and that they are both on board, that can easily be accomplished.

There is precedent for this in our Subdivision Law Section 420. Anyone who wishes to complain has 30 days to do so and then the board would then have to hold a public hearing.

The applicant is unable to participate in ZOOM meetings, so there is some question of who will be representing them.

There is some discussion about the vouchers for this meeting and the procedure if the board decides to meet in person. Most agree that Zoom is still the best option.

Resolution 2020-20: Motion to adjourn at 8:31 pm.

Motion: Bettyann Miller

Second: Travis Dubois

Vote: YES – 4 NO - 0

ADOPTED

Next Meeting date: October 13, 2020

Cut-off date: October 1, 2020

Respectfully Submitted by:
Elisa E. Robertson
Deputy Clerk