

Town of Hamilton
Planning Board Meeting
Tuesday, January 8, 2019, 7:00 PM
Hamilton Public Library
13 Broad Street, Hamilton

Present: Darrell Griff, Elaine Hughes, Bill Nolan, Bettyann Miller, Deputy Town Clerk Elisa Robertson, CEO Mark Miller, Town Clerk Sue Reymers, Town Attorney Nadine Bell, Esq.

Absent: Mary Galvez

Others: Michael Welshko, Stefanie Sterling, Kinnon Nolan-Finkel, Chris Jadwick, Crystal Jadwick, Joan Costello, Fred Palmer, Sarah Law, Erik Law, Paula Ford, David Early, Brian Chapin, Andrew Hawkins-Cohen, John Butzgy, and (?) Roberts

Meeting called to order 7:00 PM

Old Business

Erik E. Law, Special Use Permit Application, Preliminary Review, 8450 South Hamilton Road, Tax Map # 200.-1-75

Resolution # 2019- 1: Motion to OPEN the Public Hearing for the Erik Law, Special Use Permit Application

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Yes – 4 No – 0

ADOPTED

Chairman Griff asks if there is anyone who would like to speak about this application. The business is called Pond Side Repair, LLC. Neighbor Joan Costello speaks, “I would like to see them get the permit, I think that it would be a good addition to the neighborhood.”

Chairman Griff asks three times if there is anyone else there to speak to this application.

Resolution # 2019-2: Motion to CLOSE the Public Hearing for the Erik Law, Special Use Permit Application

Motion: Elaine Hughes

Second: Bettyann Miller

Vote: Yes – 4 No – 0

ADOPTED

Chairman Griff reads and reviews the comments made by the Madison County Planning Department from the GML239 response.

The SEQRA Short Form part 1 also needs to be reviewed. There are two versions of part one, one that Erik Law prepared and the second that the Deputy Clerk prepared that has Sarah Law's signature as the owner of record. Chairman Griff is given both copies to review. Chairman Griff reviews parts 2 and 3 of the SEQRA. The Board determines that there is no environmental impact for this application and Chairman Griff signs and dates part 3 of the SEQRA form.

Resolution # 2019- 3: Motion to declare this application an Unlisted Action with a Negative Declaration

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Yes – 4 No – 0

ADOPTED

Chairman Griff suggests that the board turn its attention to the applicant's narrative to set the conditions for the Special Use Permit. The conditions are as follows:

1. No employees other than Mr. Law
2. No auto sales
3. No more than 6 cars on the lot at one time
4. Days and Hours of Operation
 - Monday – Friday 7:30 am to 5:30 pm
 - Saturday 7:30 am to 12:00 noon
5. Storage space will be allocated for tires and scrap metal behind the garage and out of public view.
6. In the event that there are any structural changes to the garage where the facility is operating, the proper permits will be needed and install appropriate septic facilities.

Resolution # 2019- 4: Motion to Approve for the Erik Law, Special Use Permit Application with the conditions listed above.

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Yes – 4 No – 0

ADOPTED

New Business

John and Michelle Butzgy, Minor Subdivision Application, Preliminary Review, 8381 Larkin Road, Tax Map # 186.-1-12

Surveyor Brian Chapin provides the board with maps. The applicant wishes to cut 5 acres out of +/-200 acres. This is the Preliminary Hearing for this application. The main parcel does border the Town of Brookfield. Brookfield is included in the list of addresses for the neighbors and is a contributing factor for its need to go for a GML 239 Review by the Madison County Planning Department. Other contributing factors are that this parcel is part of the Agricultural District as well as it borders a County Highway. This is part of the Anzak estate and her daughter is the executrix. Chairman Griff asks if any of the board members have any questions about his application. The CEO has reviewed the application and indicates that everything is in order. There is plenty (200+ feet) of road frontage. Chairman Griff suggests that the next meeting be the Public Hearing for this application.

Resolution # 2019- 5: Motion to schedule the Public Hearing for the Butzgy, Subdivision Application for the next meeting to be held on February 12, 2019.

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Yes – 4 No – 0

ADOPTED

The Deputy Clerk verifies with both Mr. Chapin and Mr. Butzgy that the next meeting will be on February 12 at the Hamilton Public Library at 7pm. The cut off date for all materials for that meeting will be on January 31, 2019; by 4 pm.

SteffCo Enterprises LLC, Special Use Permit Application, Second Review, 1866 Quarterline Road, Tax Map # 170.11-1-26

Chairman Griff asks if there is anyone there to speak for this application. Mr. Andrew Hawkins-Cohen begins by stating that he wishes to speak about the 1872 property. He is concerned that there was no vote recorded about the Special Use Permit that was revoked due to violation. He would like it on the record for tax purposes so that his attorney can adjust with the city and county as to the value of the property.

Chairman Griff asks if he would like to address #1866.

Mr. Hawkins-Cohen states that he wanted to address 1872 since it was taken off the agenda.

Chairman Griff asks if he would like to speak about what is on the agenda?

Mr. Hawkins-Cohen asks what would he like him to talk about.

Chairman Griff: "I would like to know what your intentions are, the narrative that we got was...didn't really tell us what your intentions are with that particular parcel."

Mr. Hawkins-Cohen: "It states pretty clearly that our intent is to have an AIRBNB type space and have people utilize that and have a number of persons over to visit the property and the guests that are staying there."

Once it is established which document Mr. Hawkins-Cohen was referencing (the narrative from the previous months meeting, not the family history in Hubbardsville) everyone is on the same page.

Chairman Griff states that the narrative does not reflect what the actual use is going to be.

Mr. Hawkins-Cohen states that the intention of the property at this state is there will be two AIRBNB residences on the second floor, the reason for the Café and the Store license is so that he doesn't have to deal with resale or tax issues as it relates to the people staying there purchasing things. It is a way to funnel the taxes appropriately. He gives some examples.

Chairman Griff states then that the board is looking at a mixed use for the application.

Mr. Hawkins-Cohen expresses that he feels that there is a misconception that they want to hold large loud parties. He states that is not the case, he has lived in neighborhood for 12 years, pays his taxes, and knows the neighbors. He says that he and CEO Miller have a great relationship. He has an open-door policy with his properties and just wants to benefit the community. He continues to talk about the amenities on the property and the details of its construction. He explains the measures that have been taken to sound proof the property.

Town Attorney Nadine Bell says that the reason that the Chairman wants to pinpoint the narrative is that when a permit is issued it will be very narrowly tailored to whatever use it is that you request. For the benefit of the applicant, the more clearly they can define what their use is; the permit will reflect that. If something in the future changes, and business is good, and the applicant would like to make some changes they would just need to come in for modification (an amendment) of the permit. Because it is a mixed use determined by the CEO the board just needs to make sure that whatever is being proposed is being captured in the Special Use Permit. She explains that the narrative can help set forth the conditions for the permit.

The applicant returns to the 1872 property, he feels that there was a unilateral decision made. He lost money preparing the site for construction. The Chairman stated at the last meeting that the board would be watching the process on 1866 very carefully. Mr. Hawkins-Cohen states that he has a knowledgeable crew and staff and that they are not walking into this blindly. He

wants to make sure that they are being treated fairly. He states that there were some points on contention from the last meeting that he would like to address, so if they want to ask him questions...

He states that the intention is to have a café that will have maximum 10 people. A first-floor entertainment area that will have 10 -15 people at the most. He does not want to take business from across the street. He is targeting friends who run hedge funds to come to Hubbardsville and hang out and have a good time. He hopes that if they like it that they would invest there as well. "So, the uses, AIRBNB, and if they out law that; which sounds like what they are going to do, by legislation. Then we will have to create another room and make it a bed and breakfast, but I will work with Mark on that.

Board member Bettyann Miller asks about ads for events in December. Mr. Hawkins-Cohen asks if it was the charity event. Board member Miller states that it was for a craft fair. Mr. Hawkins-Cohen states that the craft fair was a mistake made by his secretary. Board member Miller states that is what has led to some confusion. Mr. Hawkins-Cohen states that she wasn't talking about the ad he ran for a charity event where he raised \$10,000 for breast cancer or anything like that that they just want to talk about the mistake they made. He asks about the good things that they are doing there also.

Board member Miller: "We need to know accurately what you intend to do."

Mr. Hawkins-Cohen: "I just told you. Accurately. Did you not understand what I just said?"

Board member Miller: "No, what I am saying is that the events are now off the table."

Mr. Hawkins-Cohen: "No, I just told you that we will have events there with the people that are staying there maximum 10-15 people, I just told you that. Did you not hear that?"

Chairman Griff states that the maximum number of people (occupancy) will be determined by the Codes Officer.

The applicant complains that no one has gotten back to him about that, he recognizes that people have been busy. He states that he is not trying to hide anything that whatever number is given he will comply.

Chairman Griff and CEO Miller agree that the occupancy is 48.

The applicant says that he would just love to do anything there to benefit that community, that's all he wants to do. He continues to say that other communities love him and send him emails asking to invest in their towns; he goes on to list a few in the area. He was hoping to increase the tax base with 1872 by creating the same thing with sophisticated people visiting

who would not be disturbing the neighborhood. He just wants to help the community, when he remodeled the 1866 property it increased the tax base. He would like to do the same for 1872. He continues to say that these are poor people who live in the area who have nothing, that they get concerned and they get wary but that he was very sensitive to what their needs were. What he is concerned about is that there seem to be some decisions being made that are contrary to public policy.

Mr. Hawkins-Cohen explains further that he has used different contractors for different projects and that he was very upset at his staff for what happened at 1872 and that he has lost money because of it. He states that it is not fair to blame him or his contractor for (the complete demolition of) 1872. He was very upset. He feels like the board does not recognize that he lives in this community, has for 12 years. He just wants to be treated fairly like everyone else. He confirms with CEO Miller that it is a nice, well-constructed property. Mr. Hawkins-Cohen verbalizes that he was very careful before buying and during construction of that property, paying special attention to the sound proofing. He states that although it has been approved for a 48 person occupancy that there will never be forty people in that house. They have spent a considerable amount of money on advertising for Hubbardsville. He states that he is, "getting run over by the board here when there are vacant houses everywhere".

Town Attorney Nadine Bell interjects and asks, for clarification, if the end goal is to combine the two properties.

The applicant states that he really has no choice at this point. He states that he had no knowledge of the 50% demolition cut off of the 1872 property as stated by the Special Use Permit.

Attorney Bell says that if the ultimate goal is to combine the two properties, instead of having two applications, as was done...

Mr. Hawkins-Cohen says that he filed the second to explain what happened.

She continues to on to say that if the properties are combined, the special use permit would have to capture both.

Mr. Hawkins-Cohen states that right now he is just worried about 1866. He owns the property next door and states that he gives himself an easement, on the record to park as many cars as legally possible on that property of 1872.

Attorney Bell says that it would have to be a legal easement.

Mr. Hawkins-Cohen states that one of the reasons he is combining the properties is that he hopes to recoup that tax base, so it goes up, so that he can pay more money into the community.

Attorney Bell explains that she would hate to see the applicant go through this process and get a Special Use Permit for 1866 and then turn around one month later and say that they now want to do it for the other property and get them combined. It would be more time efficient if you wanted to do it one time. She just wants to be clear from the beginning that there are no misunderstandings.

Attorney Bell: "So, right now, 1872 is not on the table."

Mr. Hawkins-Cohen: "It's dead right now."

Attorney Bell: "Well, you filed the application."

Mr. Hawkins-Cohen: "I did. The last application I filed, which I was sent an e-mail by somebody saying it was off the record or whatever, saying that I couldn't re-apply and the reason is that it was voted a non-conforming vacant lot."

Attorney Bell: "No, you don't vote something to be a nonconforming vacant lot, that's established by the law."

Mr. Hawkins-Cohen: "Well, no...listen, listen, I read all of this stuff, you know. I know it seems like I don't know what I am talking about. But, within the transcripts here, I read and it, specifically stated, that this gentleman got upset here at my engineer that was in here, and said, 'Look, right now, that special use permit is gone, I'm voting it gone.'"

Chairman Griff: "No, I didn't say that I'm voting it gone. I don't make that determination."

Applicants lawyer: "He didn't say that"

Mr. Hawkins-Cohen: "That's what it said in the record."

Chairman Griff: "No, it does not."

Applicants Lawyer: "It was an opinion."

Mr. Hawkins-Cohen: "It was an opinion? It didn't sound like an opinion. Did it sound like an opinion to you? (*speaking to the audience*) I listened to the minutes, it didn't seem like an opinion to me."

Chairman Griff: "The special use permit that was issued was for partial demolition, if you went past the partial demolition than you are in violation of the Special Use Permit, and that falls under the CEO and the Town Board."

Mr. Hawkins-Cohen: "That's for him to determine, not you. And he has to say on the record that this permit is now revoked, its not up to you."

Attorney Bell: "He doesn't say that on the record. There is nothing that requires... If you weren't already in the process for a separate parcel, there would be no legal obligation for Mark (CEO Miller) to come back to this board and say 'on the record...'"

The applicant gives the example of the weather being responsible for knocking down a free-standing wall, commenting that that would be acceptable.

There was no discussion of that in the previous minutes.

Board member Bill Nolan tries to ask a question; but is interrupted by the applicant and told that he can talk when he is finished.

Mr. Hawkins-Cohen states that when he talked to Mark (CEO Miller), he said that if they went over the threshold for demolition that he would come out, inspect it, and sign off on it, but that was after the fact. It does not matter anymore because it is done and now it is a vacant lot. Who cares, it doesn't matter anymore. We will go back and try to combine that in. He invites Board member Nolan to speak.

Mr. Nolan states that he was under the impression that the two men that were at the last meeting representing SteffCo for the Special Use Permit for the partial teardown were the ones that were going to do it. He asks if they did not understand it.

Attorney Bell states that this is going backwards and that tonight they should focus on 1866. It is what is on the agenda to be discussed. Let's move forward because time is money. The applicant needs direction.

A new site plan was submitted. Some parking spots may be needed. If occupancy is set at 48 people they will need 12 parking spaces with one designated as handicapped. Lighting is shown on the site plan, it is downward facing, and they reduced the bulb wattage. That may be a condition of the Special Use Permit.

It is clarified that the levels of the building are referred to as basement, first floor and second floor. There is some discussion about the sound proofing of the structure. Attorney Bell ask the board if they have any additional concerns with noise, if they are mainly concerned with the outdoor spaces and noise.

The board is concerned that since there will be events with up to 48 people that even 20 people outside having a conversation in Hubbardsville at 11:00pm, it could be disturbing to the neighbors. What the board wants to see is their plan for mitigating the noise.

The applicant owns all kind of properties including restaurants and nightclubs explains that he believes that setting expectations with the neighbors (giving them numbers to call if needed) and the training of staff and the clientele are the best way to mitigate things. He explains that he used pavers to help dampen noise. There are no outside speakers.

Chairman Griff explains that all these details are things that the board looks for in a narrative. The Chairman also asks if he has “rules of use” formulated already because they would be very useful for the board’s purposes for moving forward.

Mr. Hawkins-Cohen says that he would be happy to provide them. He also addresses parking issues that were a problem during the construction phase of this project.

There is some discussion about the landscaping and the properties surrounding the project site. Specifically, if there are there shrubs around the patio area. The answer is no.

Attorney Bell asks if there is anything else that this board has concerns about.

The board is concerned with the adequacy of the septic system for the occupancy load.

The applicant replies that the only time he sees that being a problem is during a charity event and that they would be using port a pottys. He also states that he could join the septic systems of the two properties.

More than 12 people would require a larger septic. There are currently 3 bathrooms at 1866, one on each floor.

The applicant states that he is working on the handicap accessibility for the stairs. There is a ramp to the back door. The first-floor bathroom is believed to be handicap accessible except for a bar may be needed.

They have had state inspections for the retail permit and café permit. They are now licensed to do food preparation on site. That is a change from the original application. They would like to take it a step beyond the “cash and go” type food service. The café is going to be mainly for the use of the AIRBNB patrons and their guests. It is a very small space, maybe 10 people.

Chairman Griff: “So, if we are talking food preparation, that is going to be for the second-floor event area (correction, first floor)”?

They are hoping to get licensed for the first floor as well. The example is given of a visiting author that would be staying there as well as having a book signing, they would be able to offer prepared food for people attending the signing. They would also like to provide food for passersby, this may trigger other code requirements. CEO Miller gives an example such as; a fire separation between floors or between occupancies.

Attorney Bell explains this is the reason for your narrative to be very specific because if you don't say in your narrative that you want to cater to the outside public, and then people report that you are, then you are in violation and we don't want to have to do that anymore than you want to do that.

Mr. Hawkins-Cohen: "If someone wants to wander in and have a panini so be it, but that's not something I'm looking for. Just so I'm clear, I'd like to have that, but we are not there to make money. We just want to serve the community; it's just never going to make any money."

There will be no alcohol at this time, they will come back for an amendment when the time comes. He would eventually like to sell wine, if someone starts a vineyard here.

Nadine Bell: "The retail space, is that a gift shop?"

Mr. Hawkins-Cohen: "Hey, whatever, we are open."

Nadine Bell: "Is that part of your proposal? Are you going to have a gift shop area?"

The retail space is in the floor plan. The applicant comments that the design work is very good. The Town Attorney looks at the basement floor plan with the applicant's staff. The retail space will be limited to a few shelves or a very small contained area.

Mr. Hawkins-Cohen gives the example of using iPad pros to do some electronic shopping while the guests are staying there. They are interested in integrating as much technology as possible.

Chairman Griff asks if this would be open to public walk in. The applicant replies, "if they want to, sure". There would be an employee on site then.

Nadine Bell: "So, what would be great, because we can't have a totally moving target here, is if you or legal counsel or whomever it may be...If you can put into a narrative what it is that you are actually... 'This is the proposal', this is what we want our permit at the end of the day we want our permit to allow us to X,Y,and Z. Put that in there so we can put that in a notice for a public hearing and then the neighbors can see. We can notice X and Y when it is really X, Y, and Z."

The Applicant's counsel states that they need a written narrative. Mr. Hawkins-Cohen tells his lawyer that he will write it and that he can proof read it.

The board is looking for a narrative, the information on septic...

The applicant and Town Attorney discuss procedure and how the public hearing portion of the process works. The applicant needs to nail down exactly what they want to do so that it can be used in the notice to neighbors; and if that changes, they will need to have another hearing for each change. For example: if the applicant wants to get a liquor license; at a later date that would be a change and another hearing would need to be held. There is a discussion with the Town Clerk about liquor licensing.

The issue of licensing can be very confusing, the applicant was told that they can open and sell food right away. They, "with an abundance of caution and respect for the community have held off" on all that stuff. Attorney Bell reminds them that they don't have a Special Use Permit yet, the applicant's attorney agrees. Mr. Hawkins-Cohen states that they state doesn't know and said that they could open. Attorney Bell explains that state employees frequently only know the specifics on what their job is; not as it relates to the individual regulations in each town.

The Deputy Clerk asks if the board wants copies of those documents on file; like the retail license. The applicant agrees to give a copy. It would be supporting documentation for the application.

Attorney Bell begins to list what is still needed from the applicant, which consists of:

- A specific narrative
- An amended site plan reflecting the parking
- The septic with help from CEO Mark Miller
- Noise mitigation (in writing)

The applicant asks about 1872, it is suggested that he put up signs, so people do not park there. He does not want to get into trouble for people parking there.

Board member Bettyann Miller has some concerns about the logs that are being used for a retaining wall. They look like they are starting to bow already.

Mr. Hawkins-Cohen says that they have always looked like that. It is explained that they are not all the same size. The house sits on bedrock. There is not a lot of movement of the soil. The logs are countersunk four feet into the ground. Mr. Hawkins-Cohen again states that there is an open-door policy if anyone wants to make an appointment, he will be happy to walk them through it. He states that safety is a priority.

Chairman Griff reiterates what is still needed from the applicant.

- Specific uses
- Days, hours, times, etc.
- Accessibility (Public use)
- Septic issues

The applicant is encouraged to talk with the CEO to pin down what uses can be incorporated in that property.

Chairman Griff contemplates whether to schedule a public hearing or not. Mr. Hawkins-Cohen is asked if he wants to have a public hearing at the next meeting.

He says, "Yeah, let's do it".

Attorney Bell explains that all materials discussed will need to be in by January 31, 2019. Mr. Hawkins-Cohen states that is no problem.

Everything needs to be received because the notice of public hearing must specify what you are asking for.

He asks about procedure if the application needs to be amended due to public opinion. It is explained that the hearing will just be continued to the next meeting.

Chairman Griff explains that the board listens to public comment, but the board does not make its decisions based on that.

Attorney Bell gives the example of if you have this advertised for 'a Special use permit to allow a mixed use on property located at 1866 Quarterline Road to allow the renting of rooms, the operation of a public café, and retail space, with the sale of liquor'- if that is what is advertised, and there are changes then you may need the extension.

The Deputy Clerk confirms that Ms. Sterling and Mr. Hawkins-Cohen both have copies of the Town's Zoning Law. It explains all the procedures. There is some talk of how Hubbardsville can become a hamlet.

Resolution # 2019- 6: Motion to schedule the Public Hearing for the SteffCo, Special Use Application for the next meeting to be held on February 12, 2019.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: Yes – 4 No – 0

ADOPTED

The applicant apologizes for his behavior earlier and thanks the board, he knows that they are not paid, and he appreciates their work.

Chairman Griff states that they are just trying to apply the law. He assures the applicant that he is not being "run over" by the board that he is being treated the same as anyone else.

Resolution # 2019-7: Motion to APPROVE the Minutes from November 13, 2019 and December 11, 2019

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Yes – 4 No – 0

ADOPTED

Town Clerk Sue Reymers has some announcements. Board member Bill Nolan is moving to the ZBA board so this is his last Planning Board Meeting. He will be replaced by Mike Welshko. We thank Mr. Nolan for his service to this board and wish him best of luck with the ZBA. We welcome Mr. Welshko back onto the Planning Board.

Also, after two years of work Clerk Reymers has managed to get the Town Board to agree to a stipend for the Planning Board and ZBA members for their time at meetings. They will have to fill out a voucher for each meeting.

Resolution # 2019-8: Motion to Adjourn at 8:35 PM

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Yes – 4 No – 0

ADOPTED

Next Meeting: February 12, 2019 cut off date for materials January 31, 2019

Respectfully submitted by
Elisa E. Robertson
Deputy Clerk