

**HAVERHILL PLANNING BOARD
MEETING MINUTES**

DATE: Wednesday, April 14, 2021

Place: ONLINE MEETING DUE TO COVID-19

Time: 7:00 PM

Members Present: Chairman Paul Howard
Member Robert Driscoll
Member April DerBoghosian, Esq.
Member Karen Peugh
Member Ismael Matias
Member Karen Buckley
Member Nate Robertson
Member Ken Cram
Member William Evans

Members Absent: None

Also Present: William Pillsbury, Jr., Director of Economic Development and
Planning
Lori Robertson, Head Clerk

Approval of Minutes: February 10, 2021
February 10, 2021

After board consideration, Member Robert Driscoll motioned to approve the February 10, 2021 meeting minutes. Member Karen Buckley seconded the motion.

Karen Peugh – yes
Bill Evans – yes
Karen Buckley – yes
April DerBoghosian, Esq.- yes
Kenneth Cram – yes
Nate Robertson- yes
Robert Driscoll – yes
Paul Howard – yes
Ismael Matias - yes
Motion Passed.

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Mr. William Pillsbury: Read the conduct of hearings into the record ONLINE VERSION.

Public Hearings:

Definitive Plan for 66 Emerson Street (previously known as 62-69 Emerson Street)

William Pillsbury: read the conduct of hearing for online meeting. Just a reminder this is a project that we have seen before. This came before us as a recommendation from the City Council. This went to the City Council and received their special permit. It is now back to us as a confirmatory definitive plan as a multifamily project. We are not creating any roads or lots. This is confirming any conditions that the City Council has brought forward and making sure they are adequately on the plan. With that I turn it over to Attorney Rossi for his presentation.

Attorney Anthony Rossi addressed the board. My Engineer is on from Engineering Alliance on the phone tonight. The existing structure has been there for many years. We are going to tear down the structure and build a new structure with 24 units. 10 units will be studio and the remainder will be 2 bedroom and (3) 3 bedroom units. We are required to have 36 parking spaces and the proposal shows 39. We could have had more parking but we wanted more green around the building. If you look at the plans that Mr. Salvo prepared we have green around the side, front and left side of the building. Also, there will be a dog park area for the residents. This is a corner lot and the building will be placed where the existing building is now. It has a different elevation on each corner that's why the handicapped accessibility ramp is in the rear of the building. We have worked with the City and the neighbors and abutters to put project that the City would be happy about. If you have any questions as far as drainage, etc. My engineer is on the call tonight.

Chairman Howard: Is there anyone from the public who wishes to speak on this project? (asked 2 times). Hearing none, we are going to close the public portion of the hearing and open it up to questions from the board?

Member Robertson: Is there any affordability component to this?

Attorney Rossi: These will be market rate.

Mr. Pillsbury: This is a request for approval of a definitive plan for a project previously approved for a special permit by the City Council. The project is a 24-unit multifamily project at 66 Emerson Street. The review of the plan indicates that the project complies with all requirements of the special permit granted by the city council and with zoning dimensions and requirements. The density of the proposed plan is consistent with the surrounding neighborhood. The city departments have reviewed the plan and no objections have been received. I recommend approval of the definitive plan with any notes or comments from the city departments being added to the final plan during the appeal period and prior to final plan endorsement.

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Member William Evans motioned to approve the definitive plan with the conditions that any notes or comments being added to the plan during the appeal period and prior to final plan endorsement. Seconded by Member Nate Robertson.

Nate Robertson – yes

Karen Peugh – yes

Bill Evans – yes

Karen Buckley – yes

April DerBoghosian, Esq.- yes

Kenneth Cram – yes

Ismael Matias - yes

Robert Driscoll – yes

Paul Howard – yes

Motion Passed.

City department reports are attached to and considered part of this board's decision and notice of decision. Any appeal of this board's decision and notice of decision shall be taken in accordance with M.G.L. Chapters 40A and 41 within twenty (20) days of the board's filing of this decision/notice of decision with the city clerk.

List of all documents and other exhibits used by the public body during the meeting:

Online application

Notice of Decision from City Council 10/6/20

Form F Covenant

Form D

Form D-1

Form C

Email from Lori Robertson, 3/11/21

Proposed redevelopment plan 3/14/21

Proposed site plan 6/30/20

Frontage Waiver for 0 Linwood Street:

At the beginning of the meeting the rules of online public hearings were stated by the Planning Director.

Mr. Pillsbury, Planning Director: I want to take a few minutes to make sure we are very clear about what the role of the Planning Board is on a frontage waiver. I know there is a lot of people on this call and a lot of people interested in this project. I want to be very clear about what it is and what it is not the Planning Board is doing tonight. We have had several of these projects

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over the years that have been litigated. What I am about to describe to you is the legal process is very well established in precedent and exactly what the Planning Board is supposed to do and verified by our legal department. I am going to walk you through it. Basically what is before us this evening is a frontage waiver. The only time the Planning Board receives a request to do a frontage waiver is when a frontage variance has been granted by the Zoning Board of Appeals and either no appeal has been taken or in this case an appeal was taken and the case was returned back with the case being thrown out. The variance is in place. The variance is in place from the Zoning Board of Appeals. When we have a case from a frontage variance, under state statute the Planning Board is required to have a hearing and to look at one issue under that statute. The one specific issue that the Planning Board looks at is whether there is access to the lot via the reduced frontage. Is there a road, street or way that exists to provide that access. That is the one thing that the Planning Board looks at under a frontage waiver. There have been a variety of issues that have been raised about this project. Those items were the purview of the Zoning Board of Appeals at the time. I know there is also issues regarding wetlands, conservation and drainage. All of those items are within the purview of the Conservation Commission. The applicant will have to file with the Conservation Commission a Notice of Intent and there will be hearings that will be held through the Conservation Commission. I just want to be very clear that the role of the Planning Board cannot decide on any of those things. The Planning Board's role tonight is to look very specifically and narrowly as to whether there is a street or access to this lot. That is the only thing under state law that we can do. Mr. Chairman, I am going to turn it over to the applicant and he can make his presentation. When we get to the hearing, I just want everyone to understand that...we are not trying to limit people's ability to talk or what we can talk about is that one item that the Planning Board has purview over. We are not re-litigating the variance. We are not the Board of Appeals. The Planning Board does not have the authority or that purview to do anything...the wetland issues belong with the Conservation Commission and ultimately with the City Engineer's Department. With that I think the applicant is online and can make a brief presentation.

Chairman Howard: I would just like to add that we will only take comments on that one issue we have purview over. If people are going to stray and bring up other issues, I am going to shut them off.

Mr. Glenn Fogarty addressed the board. I am both the applicant and owner of the property. Real briefly, I don't want to take much of your time. I am a lifelong resident of Haverhill. I grew up and was born and raised probably about a 1,000 yards from here on Patricia Ann Drive and Edward Court. This property is fairly important to me as my parents age, it will help me help them. As they are getting older, my father's health has continued to decline since this started. The variance was granted through the Zoning Board. It was appealed by a neighbor. The court heard it and it has been dismissed and the variance stands as it is. The appeal period is also up on that. The lot is just shy of 5 acres on Linwood. Reduced frontage was what I needed, there is going to be one home there. The home is going to be for myself. It is not a resale property. It is

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going to be for my residence. Linwood Street is a public way, owned and maintained by the City of Haverhill. There is access to the high ground of the property through Linwood Street. That is all I have to say.

Chairman Howard: Is there anyone from the public who wishes to speak? Again this is for the frontage waiver for Linwood Street and again if you wish to speak you have to hit *6 to unmute.

Mr. Peter Yannakoreaus of 85 Millvale Road addressed the board. My property is abutting to this property. I was just wondering...I went for a variance on Whittier Street. I only needed 15' and I got turned down flat. It's the same circumstances as this. The exact same circumstances.

Chairman Howard: Again that is the purview of the Zoning Board of Appeals. That is not an issue for the Planning Board.

Mr. Yannakoreaus: All right then, I'll just hang up. Thank you.

Chairman Howard: Does anyone else from the public wish to speak?

Attorney (inaudible) 84 Emerson Street addressed the board. I am the next door neighbor of that land. I'm sorry I am late to call. I missed the beginning. I understand they are applying for a variance. Can you please fill me in with what they have plans for?

Mr. Pillsbury: What was your name and address again?

Attorney: 84 Emerson Street. I just bought the property next door.

Mr. Pillsbury: Oh okay, you are calling about 66 Emerson Street. We are on a different hearing right now. If you would like to call my office tomorrow morning, I would be happy to give you any information that we have on that tonight.

Attorney: What is your name?

Mr. Pillsbury: Bill Pillsbury, I am the Planning Director.

Chairman Howard: Is there anyone else who wishes to speak on the frontage waiver for Linwood Street? Hearing none, we are going to close the public portion of the hearing and turn it over for comments from the Planning Director unless there are any questions from the board? Turn it over for comments from the Planning Director.

Mr. Pillsbury: As I said, this plan received approval for a frontage variance from the Zoning Board of Appeals and subsequently was appealed. The appeal was overturned by the court so the variance is in full effect. It requires the applicant before they can do anything else to come to the Planning Board for a frontage waiver under the state statute. As I indicated earlier the role of

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the Planning Board is limited to acting on that one specific issue which is to whether there is adequate access via a way or street or road to the site via the reduced frontage. The purview of the Planning Board is relative to that one item and anything else relative to the granting of the variances is not within the purview of this board. As we have heard...there are issues....and there are issues that have been raised by people that have filed...with the Planning Board record. Issues of concerns about wetlands, concerns about drainage. Those are items that are within the purview of the Conservation Commission and they will have to have a full-blown hearing process with notification to abutters and that will happen in the future. For tonight the Planning Board has the jurisdiction of the issue of one...an issue of what we are looking at the jurisdiction as to whether there is adequate access and with that the building inspector and I found adequate access does exist and with that I would recommend approval of the frontage wavier for 0 Linwood Street.

After board consideration, Member Robert Driscoll motioned to approve the frontage waiver for 0 Linwood Street as recommended by the Planning Director, William Pillsbury. Member Ismael Matias seconded the motion.

Member Nate Robertson: yes

Member Karen Peugh: yes

Member William Evans: yes

Member Karen Buckley: yes

Member April DerBoghosian, Esq.: yes

Member Kenneth Cram: yes

Member Robert Driscoll: yes

Member Ismael Matias: yes

Chairman Paul Howard: yes

Motion Passed.

City department reports are attached to and considered part of this board's decision and notice of decision. Any appeal of this board's decision and notice of decision shall be taken in accordance with M.G.L. Chapters 40A and 41 within twenty (20) days of the board's filing of this decision/notice of decision with the city clerk.

List of all documents and other exhibits used by the public body during the meeting:

Plan of land accompany zoning petition and frontage waiver 3-12-19

Online application

Trial Court of Massachusetts Superior Court civil tracking order docket #1977CV00712

Frontage wavier application/dept. comments

Letter from Brian Kennedy, 8-4-18

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Form D

Form D-1

Notice of decision BOA 4-17-19

Fire Department Letter, 5-13-19

Email Sharon Kennedy-Kary, 4-12-21

Conclusion and order from the court, 3-1-21

Definitive Escrows:

Crystal Springs Escrow:

Please be advised, the Haverhill Planning Board at its meeting held on 4-14-21 reviewed the request of Jay Davidowicz to reduce the amount being held for completion of work within the cited subdivision.

The board advised that the request was referred to the city engineer. The request was to review the work cited as required; advise if all work cited was completed under the approved definitive plan; if the work was completed in accordance with the approvals; and if all required remaining work was listed and if the dollar values were accurate. Please note that Planning Director William Pillsbury, Jr. recommended that the board vote to reduce the account as recommended by the City Engineer in his report to the board dated 4-14-21.

In consideration of the report from the City Engineer, John Pettis, Member Nate Robertson motioned to reduce the amount \$49,971.10 from the \$497,096.13 balance and maintain a balance of \$447,125.03 as recommended by the city engineer in his report to the board dated 4-14-21. Member Karen Buckley seconded the motion. Members Nate Robertson, April DerBoghosian, Esq., Karen Peugh, Karen Buckley, Robert Driscoll, Ismael Matias, Ken Cram, Bill Evans and Paul Howard all voted in favor to reduce the account to the balance of \$447,125.03 as recommended by the city engineer in his report addressed to the board dated 4-14-21. Members Absent: none. **Motion passed.**

As a condition of the board's vote, the **BANK is required** to notify the board that the minimum amount of \$447,125.03 is held for the completion of all remaining work. The account shall not be further reduced or released without formal board approval.

List of all documents and other exhibits used by the public body during the meeting:

Escrow Materials

Carrington Estates Phase I & Phase II:

The Haverhill Planning Board at its 4/14/21 ONLINE meeting held on Wednesday evening at 7:00 pm.

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Mr. Pillsbury: I know Attorney William Faraci is here representing a party in interest. What we have before us is a piece of litigation that is ongoing. Attorney Faraci has provided us with documentation of that. What we also have is a two phase bond. We have a bond for Carrington Estates Phase I which is about to expire. We have a bond for Carrington Estates Phase II. The question of the litigation...I am not going to get into it. I don't believe the City is a party to the litigation.

Attorney William Faraci: Yes, they are.

Mr. Pillsbury: The City is part of the litigation?

Attorney William Faraci: Yes, they are.

Mr. Pillsbury: I am going to be more careful in what I am going to say. We would recommend...I had this conversation with the City Solicitor rather than continue with the amounts...the work is done. The work is completed. There is the issue of the litigation and the scope of that litigation concerning one particular house and a homeowner. What we are going to recommend tonight is to reduce the Carrington Estates Phase I bond to zero since it is expiring and does not need to be continued because that Phase I work is done. We would reduce the Carrington Estates Phase II to an amount of \$75,000.00 and establish a new date (inaudible). Two motions would be the reduction of the phase I to zero and phase II to \$75,000.00.

Attorney William Faraci: First of all I want to express my outrage with Mr. Fogarty who did not take the opportunity to mention who his fine lawyer was that won his appeal in Superior Court. I want that on the record for free advertising. I don't know...the area that we are talking about...the work that was done...I believe was a drainage system does it service both sections of Carrington Estates or just one? If it just services phase I then we would need to have a bond in place. If it services both phases the \$75,000.00 would be sufficient to take care of the litigation. My fear is if it is found that the City is liable or with cross claims, etc. that there be money to go after to satisfy the completion of this installation. While the installation of the pipelines were being made my clients sewer line was broken and there was a huge back up of sewerage into his home. Nobody wants to pay him and nobody wants to claim responsibility, so of course I sued everybody. That is the issue, when we prevail in getting damages for my client to have a method of being able to pay that. If Carrington Estates wishes to have their bond further reduced than one of the things they can do is settle. That is all I have to say.

Mr. Pillsbury: To your point Attorney, this isn't a hearing this is an administrative conversation. Basically what I believe is that we have funds sufficient in your own words to take care of this matter in the bond. If and when the city were ever found to be liable for anything. That is a very large if. I don't know all about the case, but I do put it out there as an if. I think, and what Attorney Cox believes in the eventuality that something like that did occur there is sufficient funds and perhaps that even more need be. But there is also sufficient funds to keep the

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applicant interested in making sure that he works with us and does things like settle or whatever that may be. I think that we believe that is an amount that is sufficient. Whether it is in phase I or II it doesn't matter. It just an amount that is there and we feel it is sufficient.

Attorney William Faraci: I would just ask that if the bond for phase II covers things that were supposed to be done in phase I as well? I just don't want to lose coverage if this was all exclusive to phase I.

Mr. Pillsbury: I don't think we need to worry about that. I think that its just the matter that there is money in the bond that will be claimable if we get to that point.

Attorney William Faraci: I just want to be reassured of that.

Mr. Pillsbury: I did talk about that with Attorney Cox. I think Mr. Chairman, again the recommendation is for a reduction of phase I to zero and a reduction to phase II to \$75,000.00

Carrington Estates Phase I

In consideration of the Planning Director's recommendation, Member Karen Buckley motioned to reduce the account of Carrington Estates Phase I to a zero balance. Seconded by Member William Evans. All members present voted in favor. Members Absent: None. **Motion Passed.**

Carrington Estates Phase II

In consideration of the Planning Director's recommendation, Member Nate Robertson motioned to reduce the amount \$109,368.00 from the \$184,368.00 balance and maintain a balance of \$75,000.00. Member Karen Buckley seconded the motion. All members present voted to reduce the account to the balance of \$75,000.00 as recommended. Members Absent: none. **Motion passed.**

List of all documents and other exhibits used by the public body during the meeting:

Escrow Materials

Emma Rose Escrow:

Please be advised at the Haverhill Planning Board meeting held on ONLINE on 4/14/21 at 7:00 pm and reviewed the request to endorse the extension of the agreement for the above cited development.

The Chairman, advised the board that the agreement was reviewed by the City Solicitor as to form and was approved as attested to by his signature on said agreement. The new expiration date for performance is 9/30/21 and funding on 10/1/21. The Planning Director recommended

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that the Planning Board vote to endorse the extension agreement. It was noted, that the developer must record the extension of the agreement at the Registry of Deeds and provide proof of said recording to the Planning Office for its file.

After board consideration, Member Karen Buckley motioned to endorse the above cited agreement and that the developer provide the Planning Office with a recorded copy of said agreement as required. Member Ismael Matias seconded the motion. All members present voted in favor. Members Karen Buckley was absent. **Motion Passed.**

List of all documents and other exhibits used by the public body during the meeting:

Escrow Materials

Emma Rose Modification Escrow:

Please be advised at the Haverhill Planning Board meeting held on ONLINE on 4/14/21 at 7:00 pm and reviewed the request to endorse the extension of the agreement for the above cited development.

The Chairman, advised the board that the agreement was reviewed by the City Solicitor as to form and was approved as attested to by his signature on said agreement. The new expiration date for performance is 9/30/21 and funding on 10/1/21. The Planning Director recommended that the Planning Board vote to endorse the extension agreement. It was noted, that the developer must record the extension of the agreement at the Registry of Deeds and provide proof of said recording to the Planning Office for its file.

After board consideration, Member Karen Buckley motioned to endorse the above cited agreement and that the developer provide the Planning Office with a recorded copy of said agreement as required. Member Ismael Matias seconded the motion. All members present voted in favor. Members Karen Buckley was absent. **Motion Passed.**

List of all documents and other exhibits used by the public body during the meeting:

Escrow Materials

Reminders for escrow: None at this time.

Form A Plans: None at this time

Endorsement: 235 Essex Street – no mylars submitted.

Any other matter: **Release of Form E Covenant – Wendell Estates – Endorsement:**

Member Karen Buckley motioned to endorse the release of the Form E Covenant for Wendell Estates. Seconded by Member Ismael Matias. All members present voted in favor. Motion Passed.

Meeting adjourned.

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Signed:

Paul Howard
Chairman