



GOVERNMENT OF BERMUDA

Department of Planning

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Development Applications Board Minutes

Minutes of a meeting held on Wednesday, 1 July, 2020, at 8:45 AM at Virtual via WebEx.

PRESENT:

Denis de Frias	Victoria Pereira	Aaron Denkins
Cynthia Millett	Paul McDonald	Patrick Cooper
Wayne Dill	Dolores Vazquez	Wendy Dunne
Cyniqua Anderson	Dalton Burgess	Cheryl Packwood
David Astwood	Alice Lightbourne	

APOLOGIES: Dexter Johnston

ISSUES AND ACTIONS FROM PREVIOUS MEETING: None

APPLICATIONS:

1. PLAN-0142-19

Applicant: Veronica Manderson

Location: 48 Spanish Point Road
Pembroke, BM HM01

Description of Proposal: Create 3rd Dwelling Unit by Internal Conversion (Retroactive). * Add New External Staircase for Access to 3rd Dwelling Unit. * Replace Termite Infested Pitched Roof with New Flat Roof Terrace to Create Private Outdoor Living Space for 3rd Dwelling Unit.

Planner: Dolores B. Vazquez

Discussion: One Board member (Cynthia Millett) did not participate in the assessment or decision of this application due to late arrival.

The technical officer presented the application with a recommendation to refuse.

The Board queried the status of previously refused applications and enquired as to whether the Board could be provided with updates. Technical officers advised that many, but not all, refusals are appealed to the Minister and those which are not are typically referred to the Department's Enforcement Team. Technical officers further advised of the intention to include a list of appeal decisions on the DAB agenda in future and, in the interim, a list of such decisions can be circulated to Members.

The Board raised concerns over the fairness of the 2018 amendment to the Development and Planning Act 1974 (Section 20 (2A)) given that it requires the Board to refuse the majority of retroactive planning applications regardless of their compliance with the policies of the Draft Bermuda Plan 2018, suggesting that other courses of action (such as fines) would be more appropriate. Technical officers clarified that the Board is bound by the terms of this legislation and advised that there are plans for other parts of the 1974 Act to be enacted in the near future, including civil penalties and tribunal hearings, which are likely to affect procedures for dealing with retroactive applications.

The Board resolved to refuse the application, as received December 03, 2019 for the following reasons:

1. The applicant has failed to demonstrate to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control as required under Section 20 (2A) of the Development and Planning Act 1974.

2. **PLAN-0102-19**

Applicant: C33 Ltd

Location: 33 Church Street
City of Hamilton, BM HM12

Description of Proposal: Proposed Apartment House Development (5 Storey with 52 Units) with Retail & Property Offices (At Grade) Including Underground Parking Garage (2 storey), Communal Space Roof Deck, Boundary Walls (6ft Max. Height) and Demolition of Existing Building

Planner: Dolores B. Vazquez

Discussion: Two Board members (Cynthia Millet and Cyniqua Anderson (Corporation of St. George)) did not participate in the assessment or decision of this application due to late arrival and early departure respectively.

The technical officer presented the application with a recommendation to approve.

The Board raised concerns over the use of the rooftop terrace in terms of potential noise impacts on the adjacent Cathedral, particularly if it were to be used commercially for assembly of a large number of people and during times when a quiet environment is needed by the Cathedral. Technical officers advised that, in addition to the assessment set out in the Board Report, the intention is for the rooftop to be available to residents of the building only and that any potential conflict during particular times of the day would need to be resolved by the two parties directly rather than through the planning process, since any condition mandating this would be difficult to enforce. The Board agreed that a condition should be added limiting the use of the rooftop terrace for residents only, which has been drafted as follows:

"For the avoidance of doubt, the roof top communal area is restricted to the residents' use only. Any alternative use of the rooftop shall require the prior approval of the Development Applications Board."

The Board queried whether a Traffic Impact Statement (TIS) had been undertaken and whether one is required for this scale of development. Technical officers advised that a TIS had not been provided, the proposed development falls below the threshold of a TIS being required and a TIS is not warranted in this case given the proposed use of the building and that less parking is proposed than the minimum requirement. The technical officer did confirm that a Construction Environment Management Plan is warranted, as it was during the construction phase that the impact on existing traffic would be greatest.

The Board queried the likely value of the proposed apartments. Technical officers advised that such details had not been provided.

The Board raised concerns that insufficient parking is proposed. Technical officers confirmed their satisfaction of the proposed number of spaces relative to the site's City location and referenced the wider aspirations of the City of Hamilton Plan 2015 to reduce traffic in the City. One Board member (the representative of the Corporation of Hamilton) confirmed his and the Corporation's strong support for the proposal, particularly in terms of its regeneration benefits through bringing a longstanding vacant site back into beneficial use with a good quality form of development, and that the proposed parking, at 60% of the minimum requirement set out by the City of Hamilton Plan 2015, is similar to other recent residential developments, which work well.

The Board resolved to approve the application, as received October 25, 2019 subject to the following conditions:

1. For the avoidance of doubt the consent hereby granted is for planning permission only. Prior to the commencement of building operations a separate application for a building permit must be made and approved.

2. A Construction Methodology Plan containing details of (e. g. temporary construction access/ neighbours permission for grant of access/delineation of any required staging and storage areas/construction of related encroachments onto adjoining properties/potential negative impacts on adjoining properties during construction) and the proposed mitigation measures, shall be submitted with the building permit application. For the avoidance of doubt, emphasis should be placed on minimizing and mitigating impact on The Cathedral of the Most Holy Trinity during demolition and construction, with a view to safeguarding that structure from demolition and construction debris and activities. It should also deal with traffic management, avoiding the disruption of peak commute times.
3. In the interests of visual amenity, the entire site subject of this application shall be landscaped in accordance with the hereby approved plans prior to the issuance of a Certificate of Completion and Occupancy.
4. Parking and manoeuvring space for 36 cars and 46 cycles shall be established for use in accordance with Policies TPT.4 section 3.3 of the City of Hamilton Plan 2015, prior to the issuance of a Certificate of Completion and Occupancy.
5. The development hereby permitted shall begin before the expiration of 2 (two) years from the date of this permission.
6. Post boxes meeting the requirements of the Post Office shall be provided on site in accordance with the hereby approved site plan prior to the issuance of a Certificate of Completion and Occupancy.
7. All details of the proposed public art shall be submitted prior to the issuance of a building permit and installed prior to the issuance of a Certificate of Completion and Occupancy.
8. The minimum street level setback, achieving a minimum 7'-0" unobstructed pedestrian pathway, as required under policy RCD.6(2) of the City of Hamilton Plan, must be demonstrated prior to the issuance of the Certificate of Completion and Occupancy.
9. For the avoidance of doubt, the rooftop communal area is restricted to the residents' use only. Any alternative use of the rooftop shall require the prior approval of the Development Applications Board.

3. PLAN-0256-20

Applicant: Antanella Tucker

Location: 24 Cherry Dale
Smiths, BM FL08

Description of Proposal: Proposed Change of Use from Residential Apartment to Nursery and Single-Storey Addition.

Planner: Paul McDonald

Discussion: One Board member (Cyniqua Anderson (Corporation of St. George)) did not participate in the assessment or decision of this application due to early departure.

The technical officer presented the application with a recommendation to approve. No questions or comments were posed by the Board.

The Board resolved to approve the application, as received March 16, 2020 subject to the following conditions:

1. For the avoidance of doubt the consent hereby granted is for planning permission only. Prior to the commencement of building operations a separate application for a building permit must be made and approved.
2. In order to ensure that the use hereby approved is of a residential scale, no more than 8 (eight) children shall attend the nursery at any one time.
3. The development hereby permitted shall begin before the expiration of 2 (two) years from the date of this permission.

ANY OTHER BUSINESS: The Acting Senior Planner reminded Board members of new meeting protocols which have been circulated by the Director and requested that prior notice be provided of late arrival, where possible.



Chairman of the Development Applications Board

2 July 2020

Date