



Halifax Planning Board Meeting Minutes September 25, 2019

Official

A meeting of the Halifax Planning Board was held on Wednesday, September 25, 2019, at 7:00 p.m. at the Halifax Town Hall, Board of Selectmen's Meeting Room, 499 Plymouth Street, Halifax, Massachusetts.

Members Present: Karlis Skulte, Mark Millias, Amy Troup

Absent: Jonathan Soroko

Recused: Gordon Andrews

Acting Chairman Karlis Skulte called the meeting into session at 7:00 p.m.

Continued Public Hearing for Amanda Estates - Site Plan Modification

Present: Gordon C. Andrews and Attorney Ginny Kramer; Amanda Monti and Ed Johnson (The Party Trust) and Attorney Adam Brodsky; Halifax Building Inspector Robert Piccirilli and Attorney Amy Kwesell (Halifax Town Counsel, K-P Law)

Motion to re-open the public hearing for Amanda's Estates:

MOTION: Mark Millias

SECOND: Amy Troup

All in favor

Mr. Skulte informs the Board and audience that he has reviewed the previous minutes from the last hearing (9/9/2019).

Mr. Millias informs the Board that the Ethics Board confirmed there is no conflict and he does not have to recuse himself from this hearing.

Mr. Skulte asks the Board, either party and the public if they have any new information to bring to the Board's attention. Attorney Brodsky gives a brief summary of where things were left off regarding the request for site plan modification. He clarifies that The Party Trust is requesting one of two things: 1. A waiver of the lot line requirement (167-7D) or 2. Approval of a modification of the approved site plan without the lot lines.

Mr. Skulte asks Attorney Kwesell if the Planning Board ("PB"), in her opinion, has the authority to grant a waiver of lot line requirements. Ms. Kwesell reads the definition of Multi-family Development in the Bylaw which she interprets as clearly meaning that one can have as many units as one can fit on one lot, but that it is one lot. She goes on to read 167-7D which she feels can confuse that definition. Ms. Kwesell does not feel the PB has the authority to choose option one, to waive 167-7D. If the PB feels it needs to be waived—interpreting 7D as each building has to be on an individual lot, its own lot—this has to be waived by the Zoning Board of Appeals ("ZBA") as it is a requirement of the Bylaw. To further complicate things, Ms. Kwesell states that the ZBA has already weighed in as there was already an appeal, the Building Inspector/Zoning Enforcement Officer ("ZEO") denied enforcement and the ZBA upheld his decision. Ms. Kwesell does not feel that the judge has come to a decision of what 167-7D(a) means which she feels is the key point of this case. Ms. Kwesell informs the Board that because K-P Law only took over a couple of years ago as Land Use Counsel and therefore is not involved in this trial. As for the second request by Attorney Brodsky, Ms. Kwesell feels this is something the PB can entertain.

Ms. Kwesell states that first, the Building Inspector/ZEO interprets the Bylaw, in this case 167-7D(a). What comes next is appealing to the ZBA, which is what Mr. Andrews did. The ZBA upheld the ZEO's decision and Mr. Andrews appealed to

Land Court. The next step is Land Court decides whether this interpretation was correct or not, which they did not do. Instead they said the site plan is wrong. The applicant has taken this route to come to the PB to somehow fix the site plan which they have a right to do.

Attorney Brodsky clarifies what The Party Trust is asking for as a second option. He explains that they are asking the PB to endorse a plan that shows no lot lines which would be consistent with the Building Inspector and ZBA's interpretations that was developed in the course of litigation. He agrees with Ms. Kwesell that the judge did not answer that issue one way or the other but was focused on physical site plan approval.

Attorney Kwesell's opinion is that the PB does not have the authority to waive 167-7D(a), only the ZBA has that authority. Attorney Brodsky states that the ZBA has already interpreted 167-7D(2) which is to not require the subdivision of the property to locate each building on a lot. Mr. Brodsky is asking the PB to enforce that interpretation and endorse the plan that is consistent with that.

Attorney Kramer, representing Mr. Andrews, responds to Mr. Brodsky's summary which, she feels, Mr. Brodsky made misstatements. She states that the Court vacated the building permits and ordered the matter remanded to the ZBA to revoke the building permits. For whatever reason, she states the judge did not weigh in on the central issue which is the interpretation of 167-7D(2)(a). Ms. Kramer states that ad hoc decision by Boards is arbitrary and capricious and there must be a consistent interpretation. Ms. Kramer continues her summary of Amanda's Estates. Ms. Kramer does not feel that the definition of Multifamily Development is contrary to 7D(2)(a) if read in the common-sense manner. Ms. Kramer discusses "pork chop lots" which are estate lots according to the Zoning Bylaw which, if certain requirements are met, one can build up to one house on. Ignoring 167-7D(2)(a) would mean that estate lots now could be developable as multifamily developments. If the Town of Halifax decides to make that change to the Zoning bylaws, they have the right to do so. What the town doesn't have the right to do is change the long-standing, consistent interpretation of the Zoning Bylaw because now people find it inconvenient or can make money if this interpretation is changed or rejected. Ms. Kramer feels the PB was correct and the judge found that the PB required subdivision of the property (Amanda's Estates). Ms. Kramer agrees with Town Counsel that this decision is not a model of clarity and has internal inconsistencies. Ms. Kramer feels Mr. Brodsky failed to mention that the judge split the trial into two parts. The first part was only about whether the site plan approval and special permit required subdivision, which the judge found they both required. The second part of the trial is Mr. Andrews' claims of bad faith on the part of the Town. Mr. Skulte states that this part is not relevant here.

Ms. Kramer feels The Party Trust is gaslighting which is unfair and wrong. She goes on to say the Court has retained jurisdiction. Ms. Kramer states that they are going back for the second part of this trial soon and the PB will be a part of this litigation as well, at that point.

Mr. Skulte asks Mr. Brodsky if they have thought about going in front of the ZBA to ask for relief. Mr. Brodsky responds that the problem based on the judge's decision is with the site plan approval and the plan attached to it showing the lot lines; The special permit doesn't speak to that but the judge found that because the special permit incorporates the site plan approval, The Party Trust felt the place to fix is where the problem lies. Mr. Brodsky states that The Party Trust doesn't need a variance from the ZBA as the ZBA agrees with their interpretation and doesn't require it.

Mr. Brodsky states that the judge has stayed his order indicating the building permits so that they can move forward with this process, giving his clients an opportunity to try and fix the permitting problem. Mr. Skulte confirms with Mr. Brodsky that this means nothing needs to be demolished; the buildings can remain until this matter is resolved.

Mr. Brodsky states that in 2014 there were two other multifamily developments that were approved without the lot lines and that there has been no longstanding interpretation other than Town Counsel's interpretation which has not been adopted by the current ZBA.

Mr. Brodsky clarifies that the only plan at issue here is the site plan. Mr. Brodsky can't speak to Mr. Andrews claims against the Town, but Mr. Brodsky doesn't feel the Town has any liability as Mr. Andrews is the appellant here. Mr.

Brodsky doesn't know what the term gaslighting means in this context. Mr. Brodsky states that The Party Trust is a developer, they have their permits and built their project in compliance with those permits and in the middle, there is this issue. They are looking to complete this project started in 2014.

Attorney Kwezell, clarifies that estate lots have nothing to do with this matter and explains that estate lots are when one has reduced frontage, 50 feet. A Multifamily Development needs 150 feet of frontage. Ms. Kramer states that The Party Trust does not have 150 feet, they have 74 feet of frontage.

Attorney Kwezell heard Attorney Kramer say that the PB would be brought into this case. Mr. Skulte confirms he heard this as well. Ms. Kwezell clarifies to the PB that they are not a defendant in this Land Court suit and that this should not have been said in this setting. Ms. Kwezell clarifies that the PB has one application in front of them and suggests they act only on this application. Ms. Kwezell further advises the Board that they have to use their own interpretation and cannot concentrate on extraneous information or threats. Ms. Kramer states she was not trying to threaten. Mr. Millias took it as a threat. Ms. Kramer completely agrees with everything Ms. Kwezell said.

Mr. Skulte asks Mr. Brodsky if the PB were to decide that lot lines weren't required based on the ZBA's interpretation, how would he respond to the requirement for the frontage for the parcel to make it a buildable lot. Mr. Brodsky responds that there is no requirement for frontage because the judge found that the requirements of 167-12 controlled this project, not 167-10, which are the general requirements.

Building Inspector/ZEO Robert Piccirilli adds to the requirement regarding frontage. He agrees with Mr. Brodsky in theory, however with the special permit process the requirement of frontage is safety. The intent of a subdivision is for ingress and egress, for access, for the safety of the people that are living in this development. Mr. Piccirilli made a determination in 2017 that this project didn't require the frontage which the ZBA upheld.

Mr. Millias states that the PB was able to show that Amanda's Estates was able to provide the same entrance that one would have on any other subdivision as far as an apron. The only difference was whether the rounding was further into the layout for Elm Street but as far as the safety, they were able to provide the same entrance as any other subdivision.

Mr. Piccirilli states that the fire and police department approved this project. He adds that this is not a simple process; a multifamily development is not easier than a single-family. One needs 10 acres to start. Mr. Piccirilli goes through all the requirements of the process to approve a multifamily development.

Ms. Kwezell states that none of this discussion is for the PB, it's for the ZBA. The PB should be looking at Section 28.

Mr. Millias states that in the past the PB has accepted a modified plan that removed the lot lines as it clarified the situation. This is the only thing he feels the PB can look back on. Mr. Skulte responds that they have done things in the past but PB is getting different opinions now. Mr. Millias states that that is his point—there is no history of doing anything consistent. Mr. Skulte agrees, they have no track record of doing things a certain way as a Town.

Mr. Piccirilli states that 167-7D(2)(a) is very confusing. He further breaks this down into his interpretation, which he gave to the ZBA.

Ms. Kwezell states that the PB does not have the authority to interpret or waive 167-7D(2). Mr. Skulte reads 7D(2) aloud.

Mr. Brodsky states that if the PB takes Counsel's advice, the alternative request is to adopt the Building Inspector and ZBA's interpretation which is that The Party Trust doesn't have to subdivide the property to locate each building on a separate subdivision lot. The PB can apply this interpretation and endorse the revised plan that takes the lots off it. The Party Trust is asking the PB to modify the site plan approval plan issued in 2014 and take the lines off of the plan consistent with what the Building Commissioner and ZBA's interpretations are. Mr. Skulte confirms with Mr. Brodsky that the plans that the PB and ZBA approved show lot lines. Mr. Brodsky states that if the ZBA wants his client to show

another set of plans without the lot lines they will be happy to do that; If the Town wants them to modify the special permit, they are happy to do that as well. Mr. Brodsky clarifies that his client would be asking the ZBA for no relief, just to modify the special permit to reflect the revised plan set.

Ms. Kwesell feels that The Party Trust did things backwards. She feels they should have gone to the ZBA for their special permit then to the PB for a site plan. Any relief granted by a special permit would make the proposal more final. Ms. Kwesell states that the site plan approval was never appealed therefore we are not in a remand situation. There is no provision in the Bylaw that the PB can modify a site plan approval. She believes that this would have to be a new site plan approval.

Mr. Brodsky responds that he routinely modifies site plan approvals in other towns, but Halifax may be different.

Mr. Piccirilli asks what is considered a substantial change, if something isn't applicable is that a substantial change and does the PB have the authority to sign a new plan. Mr. Skulte responds that they would have to sign a new plan whether it does or does not apply because the new plan would not include the lot lines.

Mr. Brodsky reminds the PB that despite how things are typically done, The Party Trust was specifically told to go to PB before ZBA with this project. Therefore, they are coming to the PB to ask for modification of the plan. He adds that Planning Boards waive things and modify site plans all the time.

Mr. Skulte opens the hearing to the public. There are no comments or questions. Mr. Skulte asks the Board if they have anything to add. Mr. Millias feels stuck with if this is a new plan or just a modification, which he is leaning towards. Ms. Troup reads a letter from the PB dated 9/22/2014 stating *"Special Permits for Multifamily development are allowed by Special Permit from the Zoning Board of Appeals in the AR, B and C Districts. Variances to any requirements are sought through the Zoning Board of Appeals along with a Special Permit for Multi-Family developments as set out in the Zoning Chapter 167-7(D)(2). Please be advised that all variances and special permits shall comply with all the rules and regulations and codes of the Town of Halifax."* Mr. Brodsky states the letter is just stating standard permit language. Mr. Skulte agrees and says that it is all very confusing, and Ms. Monti is getting conflicting direction from internal departments.

Ms. Troup reads the following from the PB Meeting Minutes dated 9/18/2014 regarding the continuation of the site plan review of Amanda's Estates.

"Mr. Webby: The Board asked me last time to make sure that every building, 6 buildings each be put on its own 40,000 sq. ft. minimum lot. So then we can go and say this has already been approved and reviewed and what we call a parcel that is going to contain a driveway and then have these duplex's on their own individual lots. I have eight sets here for you..."

Mr. Webby: I think the only variance we are going to need is what they call the 150 ft frontage. They are 100 feet from the back line, the buildings are 100 feet away from each other.

Mr. Piccirilli: Joe, did we have a review on this.

Secretary: Merrill has reviewed this over and over with the subdivision plan. I think they made the tangent smaller.

Mr. Webby: We didn't touch the infrastructure, because it had already previously reviewed and approved, we didn't touch that at all.

Mr. Piccirilli: Any questions from the board,.

Mr. Millias: No, I think all we did is advise, just to draw on the lots, there were no specifications on the lot requirements themselves. Even the frontage I don't think was an issue.

Mr. Belcher: Just wanted to see the square footage (lots) were just as drawn, we're not suppose to even bother with the variances."

Mr. Andrews states that the original petition for Halifax Trails requested variances for separate lots from the ZBA and it was determined that each building had to be on separate lots in 2014/2015. Mr. Brodsky responds to that statement by adding that Halifax Trails was re-permitted in 2016 and it was determined that they did not need those frontages and the PB waived the requirement of separate lots. That is the reason The Party Trust is here today asking for the same waiver.

The PB and attorneys discuss the next best step to take. The PB decides to omit the first request by The Party Trust to waive the lot line requirement and discuss the second request: approval of the modification of the approved site plan without lot lines.

Ed Johnson (The Party Trust) speaks to the petition. He clarifies the history of the process they've gone through for Amanda's Estates. Mr. Johnson states that he has built multiple developments, never a multifamily development, but he has built many condominiums. He has never in his 40 years in this business been involved in a lawsuit. Mr. Johnson feels The Party Trust has followed every direction they've been told by the Town. He points out that Mr. Andrews did not sue The Party Trust, he sued the Town of Halifax. The project has met all of the requirements by the fire, police and water departments. The Party Trust has invested over \$2 million into Amanda's Estates and feels they have done nothing wrong. They want to make this a multifamily development and are asking for the lines to be removed, they do not want to build a subdivision.

The PB and attorneys once again discuss the next step including what would need to be requested from the judge, i.e. a continuation of the stay. Mr. Brodsky states that The Party Trust is not trying to circumvent the ZBA. Ms. Kramer states that the Court remanded this case to the ZBA with an order to vacate the building permits on 7/1/2019. Mr. Brodsky responds that the judge granted a stay of his judgment so that The Party Trust can fix the problem. Mr. Brodsky advises the PB to read the entire copy of the judge's decision and the summary judgement so that they are best understood. Mr. Skulte reads into record the Judge's Stay Order which was extended once so far. Ms. Kramer states that this is the first time the PB was asked to sign a modification (option request number two by The Party Trust).

Ms. Kwezell again clarifies the requests by The Party Trust, answers questions and advises the PB in helping to decide what the next step should be. Dates of future meetings for PB and ZBA are discussed.

The Party Trust will submit a request for an extension.

Motion to accept the current request for modification and a new site plan is not required for submission:

MOTION: Mark Millias
SECOND: Karlis Skulte
Denied: Amy Troup
Passes: 2-1

Motion to continue the Planning Board meeting for Amanda's Estates to October 3, 2019:

MOTION: Mark Millias
SECOND: Karlis Skulte
Denied: Amy Troup
Passes: 2-1

Motion to adjourn at 9:07p.m.:

MOTION: Mark Millias
SECOND: Amy Troup All in favor

It was unanimously voted to adjourn the meeting at 9:07p.m.

Date Approved:

12/19/2019

Respectfully submitted,

Karlis Skulte, (Acting) Chairman
Planning Board


