



Halifax Planning Board Meeting Minutes December 2, 2019

Official

A meeting of the Halifax Planning Board was held on Monday, December 2, 2019 at 6:30 p.m. at the Halifax Town Hall, Meeting Room #1, 499 Plymouth Street, Halifax, Mass.

Members Present: Gordon R. Andrews, Chairman; Mark Millias, Amy Troup and Karlis Skulte

The meeting was called into session at 6:30 p.m.

M/Skulte, S/Troup to accept agenda with all in favor.

Andrews recuses himself; Skulte is now acting Chairman.

6:30p.m. Amanda's Estates Continued Public Hearing, Site Plan Approval Modification

Present: The Party Trust - Amanda Monti and Ed Johnson (applicants); Attorney Adam Brodsky (represents the Party Trust); Gordon C. Andrews (abutter); Attorney Ginny Kremer (represents Gordon C. Andrews); Town Counsel Attorney Amy Kwesell (K-P Law); Engineer Joe Webby

Copies of most current email correspondence (chain dated 12/2/2019) with Planning Board questions and corresponding answers/opinions from Town Counsel are made available to those in attendance.

Brodsky reminds the Board of the applicants' request for site plan approval with modifications made to meet requirements. Kremer makes several points regarding the problems with referenced recorded plans including that they show no roadway, private drives are created through the definitive subdivision approval process which the applicant is not going through, there are no lots and the capacity of septic system should be 1,500 gallons/day. Kremer adds the applicants' request is not allowed without an amendment to the Zoning Bylaws.

Kwesell talks about private ways vs. internal drives/ways. She clarifies a private way cannot be created without subdivision control law. Explains the problems are discrepancies in the Bylaws regarding multifamily developments. Board is confined to the modification which is a reconfiguration of lot lines. Brodsky states the reconfiguration of lots was done to show 150 feet of frontage for a private way and reconfigured buildings to show each on a lot with continuous frontage on a private way.

Kwesell explains that internal drives (access drives) are created by an engineer and reviewed by the Board. It must be safe, i.e. the fire department must have proper circulation, there must be stop signs and so forth; The Board must approve a site plan with internal circulation. Skulte and Millias agree that this was already reviewed and approved by the Board. There is disagreement of whether a peer review was done on the project. There was a peer review done on the road/infrastructure and when the application changed it was determined that there was no need for another as there were no changes to road/infrastructure, per Brodsky. Troup would like to see the peer review documents. The peer review documents could not be provided.

Kwesell clarifies what is in front of the Board. The Land Court's decision was to direct the applicants to go back to the Planning Board for modification to remove lot lines or to the ZBA to receive relief from that. Kwesell states that if the applicants are seeking frontage on a private way that private way has to be a private way under Chapter 41, Subdivision Control. However, due to the discrepancy in the Zoning Bylaw, the applicants could be seeking to create lots for a multifamily development. Kremer clarifies that Land Court remanded the matter to the ZBA with an order to revoke the building permits. In addition, the developer filed a Stay to have the opportunity for relief within the confines of the

Bylaw. Kwesell states there was a mention in the judge's decision of the removal of lot lines. Brodsky states that the decision for a private way was already approved and constructed.

On two of the lots the two duplex buildings have been made into one (four-plex with breezeway) to comply with Bylaw for frontage requirements. Kremer argues that there is still no private way as it wasn't created with subdivision control law in Massachusetts. There is no definition of a private way or internal driveway in Bylaw. Troup wonders how Board can make decisions without these definitions. 81X plan approvals are discussed and the Planning Board is not involved in this process.

Troup and Skulte discuss requirements for this project. Troup wonders why the applicant is requesting no lot lines if they already have a private way and adds that the ZBA denied the plan with no lot lines. Skulte responds that this wasn't an issue before and confirms there is a physical road that has received the approvals they sought through the town. It wasn't defined at the earlier approval as a public or private way, just that it was a site drive. There is discussion regarding the water loop system. Kwesell responds the water loop system has already been approved with the infrastructure. Millias feels these modifications have no impact on this project. Brodsky explains that the applicant will need to go back to the ZBA if the Planning Board approves this plan. Skulte explains that the applicant is trying to rectify the building permit application that had no lot lines with the site plan that showed lot lines. Troup asks if the applicant went through subdivision control, 81X, internal driveway or common driveway. Skulte responds no because the lot line issue is just a formality that one wouldn't go through until after those approvals which haven't happened here. Kremer adds that the reason we are back here is because the lots depicted on the plans submitted were not created which is in violation of the Bylaw. Brodsky states the applicant is not intending to subdivide the property.

Dan Borsari, ZBA member, asks if there is an apartment complex or condo complex where every building is on its own deeded lot. Kremer responds Halifax Trails. Borsari feels that the way the Bylaw is now, you can have one building with multiple units on one lot. Kwesell states the town has no provision for condominiums but has a definition. The site plan approval was never appealed. Borsari makes the point that this Board cannot go back and change a decision/approval that was already made, they can only approve what is in front of them which is a modification to the site plan. Kwesell confirms. Kwesell also declared that condominiums had nothing to do with this project.

Skulte clarifies that the modifications are to reduce lots from six 6 to 4 and clustering the buildings. Abutter Andrews states that the ZBA's opinion on the Country Club development was that a definitive subdivision plan must be approved by the Planning Board in order to create frontage for the individual lots and to create the lots themselves. Andrews believes this plan is illusionary.

Kwesell explains if the Board approves this plan, it is site plan approval. The applicants must then get building permits from the Building Commissioner to decide if these lots are buildable. A site plan approval is a plan endorsed by the Planning Board. 81X (#1) does not require the plan to be endorsed under subdivision control law which is what 81P requires. Kwesell states that if these lots are created it doesn't mean they are necessarily buildable.

Kremer states site plan approval does not create lots.

M/Millias, S/Troup to close the comment part of the public hearing.

The Board deliberates. Skulte feels the Board needs to determine if the buildings are substantially different and if the lots meet the requirements in Bylaw and the private way issue. Millias is comfortable with what the plan shows and doesn't feel the modification has a large impact in the reconfiguration of the buildings. There is conflicting language with no restrictions regarding private way. Troup feels they need to subdivide if each individual building needs to be on an individual lot. Skulte explains paper lots can be created. Millias adds that as soon as this plan is recorded it meets Halifax's definition of a lot. Troup wonders if the plan was recorded that created the lots and created the street, why the Planning Board is going through this right now. Skulte responds that there were two different plans presented years ago: one to the Building Inspector and one to the Planning Board. There is discussion on which plans are recorded and interpretations of the Bylaw. Troup brings up the requirements of each zone which is discussed. Troup feels density

requirements and Bylaws must be followed. Millias states this project meets the density requirements. Troup asks Kwesell if 2014 site plan was recorded. Kwesell does not know as she did not represent the Board at the time.

Kwesell states there is no definition of private way in the Bylaw.

Troup feels that if a 2014 site plan was recorded there is already a road and lots, and this wouldn't be in front of the Board today. Millias responds that this is a modification. Troup would only accept if the applicants went through all aspects of subdivision control.

M/Troup, S/none to approve if the applicant goes through subdivision control, 167-7D2, follow all Halifax Bylaws and go through Zone 2 qualifications which means meeting all Halifax Bylaws. Motion doesn't carry.

M/Millias, S/Skulte to approve the modification of Amanda's Estates site plan created by Webby Engineering dated 7/10/2019 with the condition to adhere to remainder of Zoning requirements and proceed through the proper process for compliance with the aquifer protection district requirements and subject to review and approval from other various Town boards. (Troup would like to add subdividing. Millias does not add this to motion.) Two (2) members, Mark Millias and Karlis Skulte, in favor; (1) member, Amy Troup, opposed. Majority passes 2-1.

Mylar plan is submitted for endorsement.

M/Millias, S/Skulte to close public hearing.

M/Millias, S/Skulte to adjourn at 8:52 p.m. with all in favor.

Respectfully submitted,

Gordon Andrews, Chairman

Date Approved: 1/16/20



