



Halifax Zoning Board of Appeals Meeting Minutes Monday, May 4, 2020

The Halifax Zoning Board of Appeals held a public hearing on Monday, May 4, 2020 via Zoom (hosted by Town Administrator Charlie Seelig) with all Board members in attendance: Chairman Robert Gaynor, Vice-Chairman Kozhaya Nessralla, Clerk Peter Parcellin, Member Robert Durgin, Member Gerald Joy and Alternate Member Dan Borsari.

Chairman Gaynor calls the meeting to order at 7:00pm and reprises the audience that this public hearing/meeting is being recorded. He also explains the procedure and the protocol at the public hearings.

Appointment:

7:00pm – Discussion - Kristen Mearls – 26 Bow Street, building a metal garage/building

Kristen and her husband were present remotely to discuss their plans and ideas to build a 28 x 30 metal garage on their property. They present drawings of the front, back and sides of the building, catalog photos of the finished garage and photos of their property. The Board offers suggestions and advice. Joy feels that three feet to the side lot line is too close. The Board agrees. The Mearls decide to have plans drawn up without the lean-to for an RV on the side to show the Board.

Appointment:

7:15pm – Petition #918 – James Rodriguez - 9 Lake Street, Special Permit/Variance for restoration and expansion of structure/appeal of Building Inspector’s determination (cont. hearing)

James Rodriguez (owner/applicant) is present remotely. The Board discusses their thoughts from their onsite inspection on April 11, 2020 of the property. The Board agrees to uphold the Building Inspector’s denial for building permit applications on December 9, 2019 for the restoration of Rodriguez’s home with the addition of a second story structure that did not previously exist. With a motion made and seconded to deny this petition, there was a unanimous vote with five votes in favor by all voting members (with a Yes from Alternate Member Dan Borsari as well) to uphold the Building Inspector’s denial of the building permits as the members agreed that the restoration project did not meet the requirements of Zoning Bylaw 167-8D restoration and 167-8G exemption. A motion is made to deny Petition #918 and voted on. **Motion Passes with a unanimous vote to deny Petition #918, 5-0-0.**

Appointment:

7:30pm – File #921 – The Party Trust – Amanda’s Estates Remand hearing

Via Zoom, applicants the Party Trust (Amanda Monti and Ed Johnson), attorney Adam Brodsky (the Party Trust), attorney Amy Kwesell (Land Court town counsel), abutter Gordon C. Andrews and his attorney Ginny Kremer are present. The Board reviews and votes on whether three (3) permits obtained by the Party Trust were required and had been issued for Amanda’s Estates.

Special Permit for a Multifamily Development 167-7(D)(2) in the AR, B and C Districts, applying 167-12(A) Special Density Regulations for Specific Uses (multifamily uses). On a motion made and seconded whether this permit was required, the Board members voted as follows:

Robert Gaynor, Chairman	Yes
Kozhaya Nessralla, Vice-Chairman	Yes
Peter Parcellin, Clerk	Yes
Robert Durgin	Yes
Gerald Joy	Yes

On a motion made and seconded whether this permit had been issued, the Board members voted as follows:

Robert Gaynor, Chairman	Yes
Kozhaya Nessralla, Vice-Chairman	Yes

Peter Parcellin, Clerk	Yes
Robert Durgin	Yes
Gerald Joy	Yes

With five (5) “yes” votes for each, it was unanimously determined by the Board that a Special Permit for a Multifamily Development was required and had been issued (by the ZBA) for Amanda’s Estates. (Granted in 2015, modified in 2020.)

Site Plan Approval 167-28

On a motion made and seconded whether this approval was required, the Board members voted as follows:

Robert Gaynor, Chairman	Yes
Kozhaya Nessralla, Vice-Chairman	Yes
Peter Parcellin, Clerk	Yes
Robert Durgin	Yes
Gerald Joy	Yes

On a motion made and seconded whether this approval had been issued, the Board members voted as follows:

Robert Gaynor, Chairman	Yes
Kozhaya Nessralla, Vice-Chairman	Yes
Peter Parcellin, Clerk	Yes
Robert Durgin	Yes
Gerald Joy	Yes

With five (5) “yes” votes for each, it was unanimously determined by the Board that a Site Plan Approval was required and had been issued (by the Planning Board) for Amanda’s Estates. (Granted in 2014, modified in 2019.)

Special Permit for Aquifer and Well Protection 167-17(F) (2) Use Regulations, (16) Individual sewage disposal systems may not exceed a maximum of 800 gallons per day/per one acre (40,000 sq. ft.).

Section 167-17(F)(1) states:

Within an Aquifer and Well Protection District, the requirements of the underlying districts continue to apply, except that uses are prohibited where indicated by “N” in the following schedule, and that uses are permitted where indicated by a “Y” and require a special permit where indicated by “SP,” even where the underlying district requirements are more permissive. Uses permitted in the underlying districts are otherwise allowed in the Aquifer and Well Protection District.

Section 167-17(F)(2)(Schedule of uses), sub-section 16 requires a special permit in a Zone II for the following:

Individual sewage disposal systems that are designed in accordance with the Town of Halifax’s Board of Health rules and regulations supplemental to 310 CMR 15.00. In no case shall any individual sewage disposal system for any use allowed under this subsection and designed in accordance with the Town of Halifax’s Board of Health rules and regulations supplemental to 310 CMR 15.00 exceed a maximum of 800 gallons per day/per one acre (40,000 sq. Ft), except the replacement or repair of an existing system that will not result in an increase in design above the original design

The following discussion regarding this permit took place: Attorney Brodsky, Counsel for the Party Trust, the Applicant/owner, indicated that the need for this permit was not challenged in the Land Court case, that this remand stems from and cannot now be required. Attorney Kremer, Counsel for the Plaintiff/abutter Andrews indicated that the need for this permit was indeed challenged. Prior Town of Halifax Land Use Counsel and counsel for the ZBA in the instant Land Court case has opined that the Town is not in a strong position to require a special permit pursuant to §167-17 as the issue concerning §167-17 was never raised in the Land Court case (and the contested Building Permits issued). Further, according to a review of Land Court documents, it does not appear that the need for this permit was adjudicated and, therefore, this Board made no determination on whether or not the permit was, or should have been, challenged in the 2017 Complaint.

Additionally, evidence from the Halifax Board of Health indicated that the two existing septic systems are operating at levels below the 800 gpd per 40,000 square feet (the two septic systems installed are 710 gpd and 660 gpd on lots that are both over 40,000 square feet). Further, based on the number of proposed bedrooms, the modified plans indicate that the septic systems on the entire property (approximately 10 acres) and/or the property divided into four (4) individual lots will be below 800 gpd per 40,000 square feet. To that end, at least one Board member and counsel for the Party Trust opined that the special permit was not needed as the septic levels would be below 800 gpd per 40,000.

On a motion made and seconded whether this permit was required, the Board members voted as follows:

Robert Gaynor, Chairman	Yes
Kozhaya Nessralla, Vice-Chairman	Yes
Peter Parcellin, Clerk	No
Robert Durgin	Yes
Gerald Joy	Yes

On a motion made and seconded whether this approval had been issued, the Board members voted as follows:

Robert Gaynor, Chairman	No
Kozhaya Nessralla, Vice-Chairman	No
Peter Parcellin, Clerk	No
Robert Durgin	No
Gerald Joy	No

With four (4) "yes" votes and one (1) "no" vote, it was determined by the Board that a Special Permit for Aquifer and Well Protection was/is required for Amanda's Estates. With five (5) "no" votes, it was unanimously determined by the Board that a Special Permit for Aquifer and Well Protection had not been issued.

Meeting Minutes

The Board decides to pass over the Meeting Minutes as they are unable to sign them at this time.

Bills

Plympton-Halifax-Kingston Express – File #921 Advertisement = \$84.00

The Board decides to pass over the bill as they are unable to sign.

Correspondence

Planning Board Approval Letters for Form A 35 Thompson Street and Consolidated Plan for 241 Franklin Street

Adjourn:

The Board motioned and voted to adjourn the meeting with **all in favor**.

Documents:

1. Public Hearing Notice – Petition #918

2. Application Packet – Petition #918
3. Public Hearing Notice – File #921
4. Application Packet – File #921
5. Meeting Minutes – 3/9/2020 and 4/13/2020
6. Plympton-Halifax Express Invoices - File #921
7. Revolving Bill Schedule – 5/4/2020 for File #921
8. 26 Bow Street materials – photos and drawings
9. Court Ordered Remand for Amanda’s Estates – 3/30/2020
10. 2015 Special Permit

Respectfully submitted,

Date: 06/01/2020



Robert Gaynor, Chairman
Kozhaya Nessralla, Vice-Chairman
Zoning Board of Appeals